THE SHORELINE MANAGEMENT ACT JURISDICTION AND INCENTIVES FOR SHORELINE RESTORATION PROJECTS

By

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Preface from the Puget Sound Action Team

Since the arrival of settlers in the Puget Sound basin, 70 percent of tidally influenced wetlands have been lost, largely due to urbanization, port development, industrial use, dredging and filling. There are considerable ongoing efforts to reduce the rate of loss of these important habitats and restore them, where possible. While each restoration opportunity has its challenges, restoring functional habitat along urbanized waterfronts is especially difficult.

In recent years, some of the natural fish and wildlife function of these areas has been restored on a small scale in an effort to boost production and survival of declining species such as salmon and shorebirds. Many of these projects were conducted as mitigation for new waterfront construction activities or pollution incidents. Few, if any, restoration projects outside the regulatory context have occurred on urban waterfronts, but where habitat improvements have been made, important species have re-colonized the restored area.

The following document explores an unusual regulatory situation that has hampered restoration efforts in the past and may be perceived as a disincentive for doing restoration in the future. It should be noted that, in general, the Shoreline Management Act and its implementing guidelines are designed to protect natural shoreline function. The creative solutions provided in this document are meant to explore mechanisms within the current guidelines, that if employed on a limited basis, within fixed and identified geographic areas could enhance restoration opportunities in some of the most degraded areas of Puget Sound.

Shoreline Management Act Jurisdiction And Incentives For Shoreline Restoration Projects

The listing of several salmonid species as threatened or endangered under the Endangered Species Act has highlighted the pressing need to restore habitat functions and values along the State's shorelines. While a number of state statutes encourage such restoration, other laws may be creating disincentives to restoration. Recently applicants and local governments have questioned whether the Shorelines Management Act' ("SMA" or "Act"), which is intended to promote coordinated management and planning for shoreline resources, may inadvertently be presenting obstacles to shoreline restoration.

This white paper describes some recent experiences in pursuing restoration and analyzes the SMA's relevant provisions to determine whether restoration projects that alter shorelines also change the Act's jurisdictional reach to include lands that may have previously been beyond shoreline jurisdiction. Part I of the paper describes the issue that has arisen as property owners interested in voluntary restoration and local governments try to permit projects to restore shoreline habitat. Part II of the paper reviews the SMA's jurisdictional provisions issue and concludes that the SMA jurisdiction does change if shoreline restoration alters the ordinary high water mark of the shoreline. Part III identifies tools that local governments may use to create incentives for land owners to restore shorelines.

I. Examples of Possible Disincentives

The SMA creates a potential disincentive for restoration because shoreline jurisdiction typically is limited to 200 feet of the ordinary high water. Under the SMA, projects within shoreline jurisdiction are subject to additional permit requirements and appeals. Therefore, property owners will often try to plan potential developments so that they are located outside of the shoreline jurisdiction. The following case studies illustrate potential issues.

> Case Study 1: Hamm Creek. Seattle City Light was approached by King County to provide an easement to daylight a creek and connect it to the Duwamish Waterway. Seattle City Light had purchased the site, located adjacent to a City Light Substation, for the future construction of a combustion turbine. The part of the site that City Light anticipated developing was more than 200 feet from the shoreline and, therefore, outside of shoreline jurisdiction. City Light wished to retain that portion of the site for future industrial use outside of shoreline jurisdiction. City Light was also willing to maximize the area of the recreated estuary (mouth of the creek) as long as its first objective could be met. Ecology said it could not meet the need of City Light to have a portion of the land remain outside of shoreline jurisdiction unless the new estuary did not move closer than 200 feet to the portion of the site City Light wanted

[1] RCW ch. 90.58.

protected. Therefore the estuary portion of the restoration project was considerably smaller than it might have been.

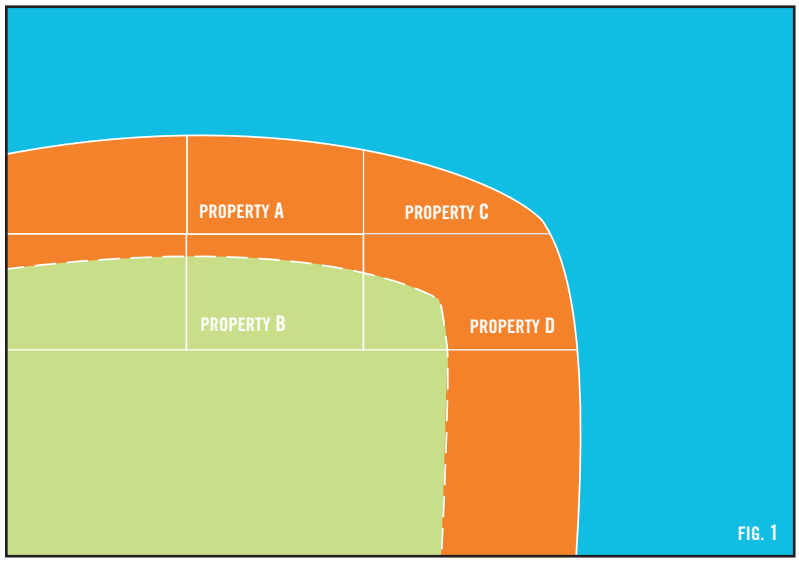
Appendix A is the letter from the Department of Ecology to King County stating the basis for Ecology's position. The Hamm Creek case study illustrates how the potential extension of shoreline jurisdiction can affect a single property owner's decisions regarding its property. The second case study illustrates the potential effect when restoration projects might affect the shoreline jurisdiction for neighboring projects.

Case Study 2. Port restoration. A commercial business operating a non-water dependent business, built a building just upriver of a port facility. The manufacturer built 200 feet back fi-om the shoreline where the non-water dependent nature of the facility would not be an issue. The Port owns the most waterward portion of the shoreline. Although there was a possibility, in conjunction with the Port, of increasing fish habitat at the shoreline by creating coves and lobes, the neighboring manufacturer did not want to have this occur because that would have moved the shoreline and consequently impinged on their use of the property. Therefore, the Port did not pursue the restoration project.

These examples suggest that property owners and their neighbors may not be pursuing restoration projects because of concern that a change in the shoreline resulting from the restoration would place property that is not now within the shoreline into SMA jurisdiction. Figures 1 and 2 illustrate the type of situation that has arisen in the above case studies. Under this simple scenario, the restoration on Property A adds area to shoreline jurisdiction on Property B. If the same owner owns both properties the disincentive is borne by a sole owner. If different owners own the two properties, then one owner's restoration changes the land use rules that apply to the other owner's property. Part II examines the legal issue in more detail.

ILLUSTRATION OF SMA JURISDICTIONAL REACH ISSUE

before restoration

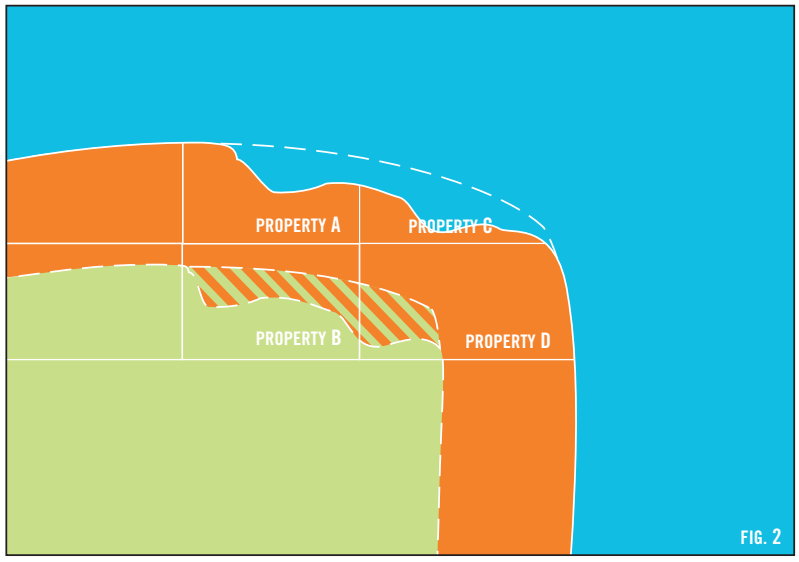


Shoreline jurisdiction

outside Shoreline jurisdiction

area added to Shoreline Jurisdiction as a result of restoration

after restoration



11. Jurisdictional Reach of the SMA

The SMA applies to "shorelines of the state, which includes both "shorelines" and "shorelines of state-wide significance."[2] Shorelines include:

> [A]ll of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of state-wide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetland associated with such upstream segments; and (iii) shoreline on lakes less than twenty acres in size and wetlands associated with such small lakes[.][3]

"Shorelines of state-wide significance" is a category of shorelines, and includes enumerated portions of Puget Sound and large lakes and rivers and their associated shorelands.[4] "Shorelands" or "shoreland areas" includes:

> [T]hose lands extending ***landward for two hundred feet*** in all directions as measured on a horizontal plane from the ordinary high water mark;[5] floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter. . . .[6] (emphasis added).

This language demonstrates the breadth of the SMA jurisdiction over state waterways, their adjacent shorelands, and land falling within the 200-foot of the ordinary high water mark. The jurisdictional definition does not distinguish between altered and unaltered shorelines. Therefore, the 200-foot limit to jurisdiction would apply under this language to areas that are within 200 feet of ordinary high water mark resulting from a restored shoreline.

The legislative findings and policy statement for the SMA supports the conclusion that SMA jurisdiction changes if the ordinary high water mark changes. The policy statement specifically addresses the alterations of shorelines. The SMA requires the Department of Ecology to recognize shoreline classifications and to revise these as needed, "regardless of whether the change in circumstances occurs through man-made causes or natural causes."[7] The SMA also expressly exempts from its provisions areas that "no longer meet the definition of 'shorelines of the state.'"[8] Thus, the SMA provides a mechanism

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[2] RCW 90.58.030(2)(c).

[3] RCW 90.58.030(2)(d).

[4] RCW *90.58.030(2)(*e)**(i-vi)**.

[5] **The** ordinary high water **mark** is the vegetation line.

[6] RCW 90.58.030(2)(f).

[7] RCW *90.58.020.*

[8] ***Id.***

that exempts certain areas from its regulations, but it does not express an intent to exempt newly-created shorelines that meet the definition of "shorelines of the state" from its provisions.

Further indication of the Legislature's intent to retain jurisdiction over shorelines exist in the SMA. For example, projects to improve fish habitat or passage or wildlife habitat are specifically exempted from the requirement to obtain a substantial development permit: however, local governments must still review these projects for consistency with their local shoreline master program.' The same principle holds true for watershed planning projects.[10]

An unpublished case from the Washington State Court of Appeals illustrates Ecology's interpretation of the jurisdictional reach of the SMA. In *Correll v.* ***The Dept.*** of *Ecology*, 2000 WL 1514842 (Div. 3), the appellant applied with Ecology to construct a canal and boat moorage in the lake adjacent to their property." Ecology's entered findings to support the permit that stated that the construction of the canal would increase the shoreline of the lake and constitute a new shoreline.[12] Although the Court of Appeals did not reach the merits of this case,[13] it illustrates that Ecology interprets the Act's jurisdiction to include areas that result from alteration of the shoreline. Ecology's position in the Hamm Creek case (Case Study 1) above similarly illustrates this point.

111. Tools for Local Governments to Create Incentives for Restoration

As has been illustrated, property owners may be reluctant to voluntarily restore shoreline areas because restoration that changes the ordinary high water mark would extend shoreline jurisdiction to property currently outside shoreline jurisdiction. Property owners may be concerned about additional requirements that the SMA imposes on development within the shoreline. This Section identifies a number of land use planning tools that local governments could implement as part of their shoreline master programs without an amendment to the Shoreline Management Act or Shoreline Guidelines. There may be some benefit in explicitly including these tools in the new version of the guidelines to increase their visibility and local governments' confidence in using them.

The effect of creating new areas of shorelands as a result of restoring shoreline areas could apply to neighboring properties as well as to the property that built the restoration projects. Owners of neighboring properties, therefore, could oppose the project. Some of the tools to provide incentives for restoration would apply to the neighboring properties as well as to the property where the restoration occurs.

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[9] RCW 90.58.147(1)(c).

[10] RCW 90.58.515.

[11] *Correll v.* ***The Dept.*** *of Ecology*, 2000 WL 1514842, *1 (Div. **3).**

[12] *Id.*

[13] The court dismissed the Correll's case because they failed to exhaust their administrative remedies under the **SMA.** The Correll's should have appealed Ecology's finding that the canal was a shoreline to the Shorelines Hearings Board.

The approaches described in Section A-E include more detailed review of the criteria local governments should consider in determining whether the approach is appropriate. Approaches in Sections F, G and H include resource materials in appendices. Approaches described in Sections I, J, and K are tools that are briefly described, but it was determined did not need elaboration in this study.

A. Master Plan provisions that facilitate fills related to restoration.

Restoration projects that move the ordinary high water mark seaward would result in removing areas currently within shorelinejurisdiction from shorelinejurisdiction. Such projects would typically require some fill activities. Many local programs discourage fill activities that create dry land. Plan amendments that make it easier to conduct fill activities as part of a shoreline restoration project could lead to greater restoration activities.

Although filling shorelines is typically discouraged because it results in the loss of habitat, there are circumstances in areas that are already highly altered that filling part of the shoreline, while excavating other areas to restore habitat might make sense. Situations where such an approach may be appropriate include:

- Bulkheaded areas, often in highly developed City waterfront areas, that have create a straight edge along the shoreline, such as the sea wall along Seattle's Elliott Bay.
- Contaminated areas in industrial areas where the approved clean up includes capping with clean sediments.

Under such circumstances, the Property owner might find some property moving into shorelinejurisdiction, while other property might fall out of shorelinejurisdiction. The net results might be acceptable to the owner and at the same time result in a net increase in shoreline functions. This approach would not be appropriate in areas that are relatively undisturbed and where the existing conditions already have high function and value.

Local governments could choose from the following criteria in setting standards for fills associated with restoration activities:

(a) the creation of dry land from the fill is part of a restoration project that results in a net increase of aquatic and/ or wetlands habitat function and value; and
(b) the creation of dry land from the fill maintains a comparable amount of developable land within and outside shorelinejurisdiction for the project proponent or adjacent property owners.

B. Range of uses.

Local governments establish through their comprehensive plans, zoning codes, Shoreline Master Programs, and other land use controls the types of uses (e.g. residential,

commercial, industrial) that are allowed in specific areas. Local governments could authorize a greater range of uses on properties affected by restoration. For example, SMPs could include provisions explicitly recognizing that restoration projects satisfy requirements for water dependent and water related uses when combined with non-water dependent/related activities on other areas on the affected property. This approach is consistent with long standing precedent of the Shoreline Hearings Board that recognize that non-water dependent or water-related uses that incorporate public access meet the SMA's preferred uses for shorelines of state-wide significance. This approach would generally not be appropriate in natural areas where the potential for restoration is low due to the undisturbed nature of the existing conditions.

For example, the Shoreline Master Program could allow non-water dependent uses to occur on properties where restoration had occurred, or on properties that are subject to shoreline jurisdiction as a result of restoration on neighboring properties. The restored area would be protected from development by existing development regulations and standards. It should be noted that the land that becomes subject to shoreline jurisdiction is furthest away from the shoreline and the least suited for water dependent uses in any case and should be the part of the property where non-water dependent uses could be allowed.

Two options are presented below. The first would maintain the status quo of uses allowed on the property that was previously outside of shoreline jurisdiction. This might not provide an incentive since the property would still be subject to the procedural requirements of the SMA. The second option would allow for a greater range of uses on the portion of the property that was already within shoreline jurisdiction. This approach would provide an incentive to the property owners by providing additional flexibility for the property that was already in shoreline jurisdiction.

Option 1:

Local governments could choose from the following criteria in setting standards regarding the range of uses:

(a) the restoration project results in a net increase of aquatic and/ or wetlands habitat function and value and shall fulfill the objective of encouraging water dependent uses of the shoreline; and
(b) the property that moves from outside of shoreline jurisdiction to within shoreline jurisdiction may continue to be developed using the same range of uses consistent with the underlying land use zone and the comprehensive plan.

Option **2:**

Local governments could choose from the following criteria in setting standards regarding the range of uses:

(a) the restoration project results in a net increase of aquatic and/ or wetlands habitat function and value and shall fulfill the objective of encouraging water dependent uses of the shoreline; and
(b) the property subject to the restoration and any property that moves from outside of shoreline jurisdiction to within shoreline jurisdiction as a result of the restoration project may be developed for a range of uses consistent with the comprehensive plan and zoning code, including uses that are non-water dependent; and
(c) the development of the portion of the property that is not subject to restoration shall be subject to storm water, drainage, setbacks, noise, light, grading, or other appropriate restrictions that assure that the restoration continues to provide a net increase in aquatic or wetlands habitat function and value.

C. Restoration incenting development standards.

Development standards are the broad array of regulations, such as setbacks, height limits, lot coverage, storm water detention, and buffers that local governments apply to property. Local governments could enact development standards appropriate for altered shorelines that provide opportunities for increased densities or other means of increasing the value of land affected by restoration projects. Such densities could be focused away from the restored area, or other ecologically valuable resources.

This approach would be most appropriately applied in urban areas where increased density is consistent with the Growth Management Act and where many shorelines have potential for restoration due to historic patterns of development (e.g. former industrial areas or diked areas along rivers and estuaries within the urban growth area). This approach would generally not be appropriate in more rural areas where the potential for restoration is low due to the undisturbed nature of the existing conditions.

Local governments could choose from the following criteria in setting standards regarding incenting development standards:

(a) the restoration project results in a net increase of aquatic or wetlands habitat function and value; and
(b) the property subject to the restoration and any property that moves from outside of shoreline jurisdiction to within shoreline jurisdiction may seek an adjustment from the development standards. These development standards could include height restrictions, density requirements, floor to area ratio, or setbacks subject to Planned Unit Development process; and
(c) the development of the portion of the property that is not subject to restoration shall be subject to storm water, drainage, setbacks, noise, light, grading, or other appropriate restrictions that assure that the restoration continues to provide a net increase in aquatic or wetlands habitat function and value.

D. Integrated buffers.

Local governments could modify the buffers that would apply to the restored areas and to other areas on the affected property. In particular buffer regulations could be tailored to ensure that buffers are not imposed on restoration areas that further impact the remaining developable land. Local government would need to ensure that such action sufficiently protected existing functions and values.

For example, many highly altered areas provide limited function and value for such attributes as large woody debris recruitment, shading, or large animal habitat. Where such areas become buffers due to restoration, local governments should retain flexibility in establishing buffer widths that result in a net increase in function and value that may be different then would be used in an undisturbed area.

Local governments could choose from the following criteria in setting standards for integrated buffers:

(a) the restoration project results in a net increase of aquatic or wetlands habitat function and value and shall fulfill the objective of encouraging water dependent uses of the shoreline; and
(b) buffers that apply to development of the property subject to the restoration and any property that moves from outside of shoreline jurisdiction to within shoreline jurisdiction may be developed using buffers for the restoration project that are no more restrictive then the buffers that would apply without the restoration but that still assure that the restoration project results in a net increase in aquatic or wetlands habitat function and value; and
(c) the development of the portion of the property that is not subject to restoration shall be subject to storm water, drainage, setbacks, noise, light, grading, or other appropriate restrictions, in addition to buffers, that assure that the restoration continues to provide a net increase in aquatic or wetlands habitat function and value.

E. Credit for open space requirements for remainder of site.

Local governments could allow affected property owners to use restoration areas to satisfy open space requirements.

For example, under the scenario illustrated in Figure 1, the property owner would be able to use the restoration project to earn an open space credit for the developable part of the property. This credit would balance out the disincentive of having the property moving into shoreline jurisdiction.

Local governments could choose from the following criteria in setting standards for substitution for open space:

(a) the restoration project results in a net increase of aquatic or wetlands habitat function and value and shall fulfill the objective of encouraging water dependent uses of the shoreline; and
(b) restoration projects may be used to satisfy requirements for open space;and
(c) the development of the portion of the property that is not subject to restoration shall be subject to storm water, drainage, setbacks, noise, light, grading or other appropriate restrictions, in addition to buffers, that assure that the restoration continues to provide a net increase in aquatic or wetlands habitat function and value.

F. Transfer of Development Rights.

Local governments could assign owners of affected properties development rights that could be transferred to other properties ("Transfer of Development Rights" or "TDRs"). Such programs are currently used by some jurisdictions to address properties that cannot be developed due to the presence of critical areas or to create incentives for specific types of development. Local governments could identify specific "receiving areas" away from the shoreline, or in parts of the shoreline that may be appropriate for more intense use.

Transfer of Development Rights have been used to promote a number of important objectives, including relieving pressure on properties constrained by sensitive areas, promoting infill in urban areas, by transfemng rights from more rural areas, and providing credit inside urban areas for retaining natural resource lands outside of the Urban Growth Area. Development rights could be provided in exchange for voluntary restoration projects.

Examples of TDR ordinances that could be used as models by local governments are included in Appendix B.

G. Planned action.

RCW 43.21C.031 allows GMA counties and cities to designate a planned action for subareas. Local governments could identify areas that are a high priority for restoration and prepare a planned action for the area that would cover both restoration and development projects. As discussed below, the planned action would satisfy many of the environmental review requirements.

As part of a planned action the local government prepares a detailed programmatic Environmental Impact Statement that analyses environmental impacts of specific types of actions identified as planned actions. The local government then adopts an ordinance, following a public process, that adopts the planned action along with the mitigation identified in the EIS. The planned action ordinance satisfies SEPA's procedural requirements for implementing activities that are consistent with the planned action ordinance.

For example, a local government could identify an area of its shoreline that has significant restoration and redevelopment potential and prepare a "planned action" EIS that addresses both restoration and redevelopment impacts. After a public process, the local government would designate the restoration and redevelopment activities as "planned actions.'' Property owners that developed and restored their properties consistent with the planned action requirements could use the work already done to satisfy SEPA's procedural requirements.

Appendix ***C*** includes information regarding Planned Actions that local governments have enacted that evaluate the costs and benefits of the approach. The study identifies jurisdictions that could be contacted to obtain copies of planned action documents.

H. Subarea- SEPA plan.

A subarea plan is a focused plan that local governments adopt for a discrete area within its boundaries to provide greater detail, or more area specific policies or development standards. The local government could identify areas of high priority for restoration and conduct subarea planning and environmental review that would reduce the costs of conducting environmental review by individual property owners. Examples of subarea plans for shoreline areas include Tacoma's Thea Foss Redevelopment and the Anacortes Fidalgo Bay Subarea Plan. These plans are briefly discussed in Appendix C.

I. Expedited permitting.

Local governments could include provisions in their codes allowing properties with voluntary restoration to receive priority treatment in processing.

J. Vesting.

State statues and case law establish the time of vesting for a variety of land use approvals. Local governments may enact vesting rules that are more protective of the property owner than is provided by state law. Local governments could vest development on affected properties to land use rules in effect at time of application or approval of the restoration project.

K. Focus appeals at Shoreline Hearings Board.

Some local governments still subject shoreline permits to local appeals in addition to statutory appeals to the Shoreline Hearings Board. If properties subject to restoration were not subject to local appeals, it would remove one area of time and cost of approval. A change in the appeals process would occur only after the legislative body for the local government conducted the appropriate public process for amending its code. Accountability would still be met by Shoreline Hearings Board review for consistency with the SMP and SMA.

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APPENDIX A

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
P.O. Box 47600 • Olympia, Washington 98504-7600
(206) 407-6000 • TDD Only (Hearing Impaired) (206) 407-6006

August 21, 1995

Mr. Jim Kramer, Manager
King County Surface Water Management Division
Department of Public Works
700 Fifth Avenue
Seattle WA 98104

Dear Mr. Kramer:

Thank you for your letter of July 14, 1995, concerning the Hamm Creek habitat improvement project on the Duwamish River.

Clearly this is a project that everyone should support. In the past Ecology has done, and will continue to do, whatever we can to assure that this project is successfully completed. We also understand the desire on the part of Seattle City Light to be able to move forward on their generator project or to use their property for other purposes.

However, after careful review and consideration, and in consultation with the Office of the Attorney General, it is our conclusion that we simply do not have the legal authority to interpret the Shoreline Management *Act* (SMA) in the manner suggested. The act does give the department the authority to establish the ordinary high water mark but only to the extent that the location established is in accordance with the definition in the law.

This definition is specific in stating that the mark is found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in all ordinary years, as to mark upon the soil a character *distinct* from that of the abutting upland, in respect to vegetation . . ." As you note, the definition goes on *to* allow consideration of natural changes and of changes that are the result of permitted development, but only to the extent that the physical indicators of the mark actually change location.

You propose that the line be fixed by the terms of the permit at the current location. The problem with *the* proposal is that when the project is completed, an ordinary high water mark will *exist* on the property in a new location established by the presence and action of the water. *Any* declaration by Ecology or anyone else that is not consistent with the physical evidence, would be pointless.

We completely agree with your statement that the restoration project is *consistent* with the policy of the SMA. However. the promotion of broad public participation in the decisions about shoreline development is also part of the basic policy of the act. The effect of your proposal would be to deprive the public of participation in decision making about the shoreline and it is, therefore, inconsistent with tbat aspect of the Act's policy.

The precedent may appear *good* as viewed from the perspective of this project. But in fact the precedent, from our perspective, would be the abandonment of over twenty years of consistent application of the definition of the ordinary high water mark, based on the actual field conditions and evaluation pursuant to biological and hydrological science.

There is substantial case law saying what is proposed cannot be done and *that* Ecology's long-standing interpretation is the correct approach. The Supreme Court *case,* Juanita Bay Valley Community v. City of Kirkland (1973) established *the* practice of basing such determinations on actual field conditions and good science as appropriate. Most recently, the SHB upheld the practice in *the* Carol R. Cassinelli, et al. v. City of Seattle and Norgaard case (SHB 9346 & 47).

Finally, we would note that our review of the King County Shoreline Master Program indicates that the area in question is designated as an Urban shoreline environment and that under *that* designation, non-water related industrial uses are a permitted use, While there can obviously be no guarantees given prior to application for a permit and review through the process, if the restoration project goes forward and Seattle City Light then applies for a shoreline permit for the generation plant, the current plans for the area indicate that the project is "approvable." The fact that the project would be designed *to* accommodate the restoration project would also likely be of assistance to a favorable outcome of the permit process.

In closing I would like *to* reiterate that Ecology supports the restoration project. I suggest that *the* MOU be revised in a way that will facilitate the project. We continue *to* be interested in working with King County and Seattle City Light on this project and will be contacting you soon to follow-up on this matter.

Sincerely,

Mary Riveland

Mary Riveland
Director

CE: Cynthia Sullivan, King County Councilmember

APPENDIX B

development rights program, the Planned Residential Development program, the overlay zones, and the Non-Residential Floating zone and report on these topics to the public.

A. Transfer of Development Rights Program. The creation of a market for development rights is essential if the transfer of such rights is to offer a reasonable incentive permanently to preserve forest and agricultural lands. The following procedures are intended to provide the information necessary and a mechanism for evaluating the functioning of such a market.

1. Records. The Island County Auditor shall keep a record of all certificates of development rights which are transferred and the compensation paid therefor. These items of information are readily available in the Excise Tax Affidavit which the purchaser and seller must file with the Auditor following the transfer of these property rights. The Auditor may also revise the Excise Tax Affidavit and/or create a separate questionnaire which may be used in conjunction with the affidavit to request that the parties provide additional information which will be useful in evaluating the TDR program, including the length of time the certificates were for sale, and the purpose for which they were purchased. Sellers and purchasers are encouraged to provide this information to facilitate monitoring of the TDR program.

   The Assessor shall also keep records regarding the TDR program.

   In addition to usual records regarding valuation and tax assessment, the Assessor shall keep a record of the length of time between transfer from a sending property and transfer to a receiving property.

   The Planning Director shall keep a record of the following information:

   a) Application for Use Approval for TDRs;

   b) Date of application;

   c) Date of approval, modification or denial of the application;

   d) Reasons for modification or denial, if the application is modified or denied;

   e) Expiration of preliminary approvals prior to application for final approval; and,

   f) Reapplication by an applicant whose preliminary approval expired or whose application was denied.

2. Review. The first review under this section shall begin within twenty-four (24) months of the effective date of this Chapter. Subsequent reviews shall occur not less than two (2) years nor more than four (4) years following completion of the previous review.

Reviews shall summarize all activity relative to transfer of development rights and shall consider:

a) Are TDRs being transferred?

b) If they are being transferred, what are the areas of activity?

c) What size are the sending and receiving parcels?

d) What densities are being achieved?

e) If they are not being transferred, is inactivity a function of the economy in general or of the structure of the TDR program?

f) Are TDRs being held for investment purposes?

g) Should the number of TDRs needed for one (1) dwelling unit be modified in any or all zones?

h) Should TDRs be required in the non-residential floating zone?

i) Is the concept of a reasonable incentive permanently to preserve agriculture and forest lands being realized under the system?

j) Is the concept of preservation and enhancement of wetlands being realized under the system?

k) Comments from the general public.

l) If the system or any facet of the system is not functioning, what modifications should be made?

m) Is information regarding the program being communicated effectively?

In addressing the questions of economy versus the structure of the TDR program, the Planning Commission may wish to compare Island County to similar rural communities. Much of the information which will be compiled to facilitate the evaluation of the TDR program will come from individuals who have transferred and/or used TDRs. It will be more difficult to obtain information from those who did not use development rights. Therefore, the Planning Commission may wish to perform a random sampling of County residents and property owners.

B. **Planned Residential Development Program.** This Chapter allows PRDs on parcels over ten (10) acres, but smaller than twenty (20) acres, in size and on parcels twenty (20) acres or larger in size. The following procedures are intended to provide the infomation necessary and a mechanism for evaluating whether the program is functioning to achieve a better pattern of development.

1. Records. The Planning Director shall keep a record of the following information:

THE SEATTLE MUNICIPAL CODE

*** THIS SECTION IS CURRENT THROUGH SEPTEMBER 2002 (ORDINANCE 120845) ***

TITLE 23 LAND USE CODE
SUBTITLE III LAND USE REGULATIONS
DIVISION 2 AUTHORIZED USES AND DEVELOPMENT STANDARDS
CHAPTER 23.49 DOWNTOWN ZONING
SUBCHAPTER I GENERAL STANDARDS

Seattle Municpal Code § 23.49.014

§ 23.49.014 Transfer of development rights (TDR).

A. General standards.

1. The following types of TDR may be transferred to the extent permitted in Chart 23.49.014A, subject to the limits and conditions in this Chapter:

a. Housing TDR;

b. Landmark TDR; and

c. Open space TDR.

2. In addition to transfers permitted under subsection Al, TDR may be transferred from any lot to another lot on the same block, to the extent permitted in Chart 23.49.014 A, subject to the limits and conditions in this chapter.

3. Location of Sending and Receiving Lots. A lot's eligibility to be either a sending or receiving lot is regulated by Chart 23.49.014 A.

4. Except as expressly permitted pursuant to this chapter, development rights or potential floor area may not be transferred from one lot to another.

5. No permit after the first building permit, and in any event, no permit for any construction activity other than excavation and shoring or for occupancy of existing floor area by any use based upon TDR, will be issued for development that includes TDR until the applicant's possession of TDR is demonstrated according to rules promulgated by the Director to implement this section.

B. Standards for Sending Lots.

1. The maximum amount of floor area that may be transferred, except as open space TDR, from an eligible sending lot, except a sending lot in the PSM or IDM zones, is the amount by which the product of the eligible lot area times the base FAR of the sending lot, as provided in Section **23.49.011,** exceeds the sum of any existing chargeable gross floor area on the sending lot plus any TDR previously transferred from the sending lot. The maximum amount of floor area that may be transferred from an eligible open space TDR site is the amount by which the product of the eligible lot area times the base FAR of the sending lot, as provided in Section **23.49.011,** exceeds the sum of (a) any existing chargeable gross floor area that is built on or over the eligible lot area on the sending lot, plus (b) the amount, if any, by which the total of any other chargeable floor area on the sending lot exceeds the product of the base FAR of the sending lot, as provided in Section **23.49.011,** multiplied by the difference between the total lot area and the eligible lot area, plus (c) any TDR previously transferred from the sending lot. The eligible lot area is the total area of the sending lot, reduced by the excess, if any, of the total of accessory surface parking over one-quarter (1/4) of the total area of the footprints of all structures on the sending lot; and for an open space TDR site, further reduced by any portion of the lot ineligible under Section 23.49.027.

2. When the sending lot is located in the PSM or IDM zones, the gross floor area that may be transferred is 6 FAR, minus the sum of any existing chargeable gross floor area and any floor area in residential use on the sending lot, and further reduced by any TDR previously transferred from the sending lot.

3. When TDR are transferred from a sending lot in a zone with a base FAR limit, the amount of chargeable gross floor area that may then be built on the sending lot shall be equal to the area of the lot multiplied by the applicable FAR limit set in Section **23.49.011,** minus the total of:

a. The existing chargeable floor area on the lot; plus

b. The amount of gross floor area transferred from the lot.

4. When TDR are sent from a sending lot in a PSM zone, the combined maximum chargeable floor area and residential floor' area that may then be built on the sending lot shall be equal to the total gross floor area that could have been built on the sending lot consistent with applicable development standards as determined by the Director had no TDR been transferred, less the sum of:

a. The existing'chargeable floor area on the lot; plus

b. The amount of gross floor area that was transferred from the lot.

5. Gross floor area allowed above base FAR under any bonus provisions of this title or the former Title24, or allowed under any exceptions or waivers of development standards, may not be transferred. TDR may be transferred from a lot that contains chargeable floor area exceeding the base FAR only to the extent, if any, that:

a. TDR were previously transferred to such lot in compliance with the Land Use Code provisions and applicable rules then in effect;

b. Those TDR, together with the base FAR under Section **23.49.011,** exceed the chargeable floor area on the lot and any additional chargeable floor area for which any permit has been issued or for which any permit application is pending; and

c. The excess amount of TDR previously transferred to such lot would have been eligible for transfer from the original sending lot under the provisions of this section at the time of their original transfer from that lot.

6. Landmark structures on sending lots from which Landmark TDR are transferred shall be restored and maintained as required by the Landmarks Preservation Board, according to the procedures in the Public Benefit Features Rule:

7. Housing on lots from which housing TDR are transferred shall be restored to the extent required to provide decent, sanitary and habitable conditions, in compliance with applicable codes, and so as to have an estimated minimum useful life of at least fifty (50) years from the time of the TDR transfer, all as approved by the Director of the Office of Housing. If housing TDR are proposed to be transferred prior to the completion of work necessary to satisfy this subsection B7, the Director of the Office of Housing may require, as a condition to such transfer, that security be deposited with the City to ensure the completion of such work.

8. The housing units on a lot from which housing TDR are transferred, and that are committed to low-income housing or low-moderate income housing use as a condition to eligibility of the lot as a housing TDR site, shall be generally comparable in their average size and quality of construction to other housing units in the same structure, in the judgment of the Housing Director, after completion of any rehabilitation undertaken in order to qualify as a housing TDR site.

C. Limit on Variable Scale of Development TDR. Any receiving lot is limited to a gain of one (1) FAR or fifteen (15) percent of the floor area above the base FAR, whichever is less, from TDR from sending lots that are eligible to send TDR solely because they are on the same block as the receiving lot.

D. Transfer of Development Rights Deeds and Agreements.

1. The fee owners of the sending lot shall execute a deed with the written consent of all holders of encumbrances on the sending lot, unless (in the case of TDR from a housing TDR site) such consent is waived by the Director of the Office of Housing for good cause, which deed shall be recorded in the King County real property records. When TDR are conveyed to the owner of a receiving lot described in the deed, then unless otherwise expressly stated in the deed or any subsequent instrument conveying such lot or the TDR, the TDR shall pass with the receiving lot whether or not a structure using such TDR shall have been permitted or built prior to any conveyance of the receiving lot. Any subsequent conveyance of TDR previously conveyed to a receiving lot shall require the written consent of all parties holding any interest in or lien on the receiving lot from which the conveyance is made. If the TDR are transferred other than directly from the sending lot to the receiving lot using the TDR, then after the initial transfer, all subsequent transfers also shall be by deed, duly executed, acknowledged and recorded, each referring by King County recording number to the prior deed.

2. Any person may purchase any TDR that are eligible for transfer by complying with the applicable provisions of this section, whether or not the purchaser is then an applicant for a permit to develop downtown real property. Any purchaser of such TDR (including any successor or assignee) may use such TDR to obtain FAR above the applicable base on a receiving lot to the extent such use of TDR is permitted under the Land Use Code provisions in effect on the date of vesting, under applicable law, of such person's rights with respect to the issuance of permits for development of the project intended to use such TDR. The Director may require, as a condition of processing any permit application using TDR or for the release of any security posted in lieu of a deed for TDR to the receiving lot, that the owner of the receiving lot demonstrate that the TDR have been validly transferred of record to the receiving lot, and that such owner has recorded in the real estate records a notice of the filing of such permit application, stating that such TDR are not available for retransfer.

Chart 23.49.014 A

	TDR Transferable within-block	Types of TDR transferable within or between blocks		
Zones*	Transfer from any lot within the same Downtown block	Housing TDR	Landmark TDR	Open Space TDR
DOC 1 and 2	S, R	S, R	S, R	S, R
DRC	S, R**	S, R**	S, R**	S, R**
DMC zones with a height of 85' or greater	X	S, R	S, R	S, R
DMC 65'	X	S	S	S
DMR	X	S, R***	S, R***	S, R***
IDM, IDR and PSM	X	S	X	X

S = Eligible sending lot.

R = Eligible receiving lot.

X = Not permitted.

*Development rights may not be transferred to or from lots in the following zones: PMM; DH1 or DH2.

**Transfers to lots in the DRC zone are permitted only from lots that also are zoned DRC.

***Transfers to lots in the DMR zone are permitted only from lots that also are zoned DMR.

3. For transfers of housing TDR, the owner of the sending lot shall execute and record an agreement, with the written consent of all holders of encumbrances on the sending lot, unless such consent is waived by the Director of the Office of Housing for good cause, to provide for the maintenance of the required housing on the sending lot for a minimum of fifty (50) years. Such agreement shall commit to limits on rent and occupancy, consistent with the definition of housing TDR site and acceptable to the Director of the Office of Housing.

4. For transfers of Landmark TDR, the owner of the sending lot shall execute and record an agreement in form and content acceptable to the Landmarks Preservation Board providing for the restoration andmaintenance of the historically significant features of the structure or structures on the lot.

5. A deed conveying TDR may require or permit the return of the TDR to the sending lot under specified conditions, but notwithstanding any such provisions:

a. The transfer of TDR to a receiving lot shall remain effective so long as any portion of any structure for which a permit was issued based upon such transfer remains on the receiving lot; and

b. The City shall not be required to recognize any return of TDR unless it is demonstrated that all parties in the chain of title have executed, acknowledged and recorded instruments conveying any interest in the TDR back to the sending lot and any lienholders have released any liens thereon.

6. Any agreement governing the use or development of the sending lot shall provide that its covenants or conditions shall run with the land and shall be specifically enforceable by The City of Seattle.

E. TDR Sales Before Base FAR Increases and Changes in Exemptions. Transfers of TDR from any lot from which a TDR transfer was made prior to the effective date of the ordinance codified in this chapter are limited to the amount of TDR available from such lot immediately prior to such date.

F. Projects Developed Under Prior Code Provisions.

1. Any project that is developed pursuant to a master use permit issued under the provisions of this title as in effect prior to the effective date of the ordinance codified in this chapter, which permit provides for the use of TDR, may use TDR that were transferred from the sending lot consistent with such prior provisions prior to such effective date.

2. In addition or in the alternative, such a project may use TDR that are transferred from a sending lot after the effective date of the ordinance codified in this chapter.

3. The use of TDR by any such project must be consistent with the provisions of this title applicable to the project, including any limits on the range of FAR in which a type of TDR may be used, except that open space TDR may be used by such a project in lieu of any other TDR or any bonus, or both, allowable under such provisions.

G. TDR Satisfying Conditions to Transfer Under Prior Code. If the conditions to transfer Landmark TDR, as in effect immediately prior to the effective date of the ordinance codified in this chapter, are satisfied on or before December 31, 2001, such TDR may be transferred from the sending lot in the amounts eligible for transfer as determined under the provisions of this title in effect immediately prior to the effective date of the ordinance codified in this chapter. If the conditions to transfer of housing TDR or TDR from Major Performing *Arts* Facilities are satisfied prior to the effective date of the ordinance codified in this chapter under the provisions of this title then in effect, such TDR may be transferred from the sending lot in the amounts eligible for transfer immediately prior to that effective date. For purposes of this subsection, conditions to transfer include, without limitations, the execution by the owner of the sending lot, and recording in the King County real property records, of any agreement required by the provisions of this title or the Public Benefit Features Rule in effect immediately prior to the effective date of the ordinance codified in this chapter, but such conditions do not include any requirement for a master use permit application for **a** project intending to use TDR, or any action connected with a receiving lot. TDR transferable under this subsection G are eligible either for use consistent with the terms of Section **23.49.011** or for use by projects developed pursuant to permits issued under the provisions of this title in effect prior to the effective date of the ordinance codified in this chapter. The use of TDR transferred under this subsection G on the receiving lot shall be subject only to those conditions and limits that apply for purposes of the master use permit decision for the project using the TDR.

H. Time of Determination of TDR Eligible for Transfer. Except as stated in subsection G, the eligibility of a sending lot to transfer TDR, and the amount transferable from a sending lot, shall be determined as of the date of transfer from the sending lot and shall not be affected by the date of any application, permit decision or other action for any project seeking to use such TDR.

I. Use of Previously Transferred TDR by New Projects. Any project using TDR according to applicable limits on types and amounts of TDR in Section **23.49.011** may use TDR that were transferred from the sending lot consistent with the provisions of this title in effect at the time of such transfer.

HISTORY: Ord. 120443 §§ 11,2001.

THE SEATTLE MUNICIPAL CODE

*** THIS SECTION IS CURRENT THROUGH SEPTEMBER 2002 (ORDINANCE 120845) ***

TITLE 23 LAND USE CODE
SUBTITLE III LAND USE REGULATIONS
DIVISION 2 AUTHORIZED USES AND DEVELOPMENT STANDARDS
CHAPTER 23.49 DOWNTOWN ZONING
SUBCHAPTER I GENERAL STANDARDS

Seattle Municpal Code § 23.49.027

§ 23.49.027 Open-space TDR site eligibility.

A. Intent. The intent of open-space TDR is to provide opportunities for establishing a variety of usable public open space generally distributed to serve all areas of downtown.

B. Application and Approval. The owner of a lot shall apply to the Director for approval of the lot as a sending lot for open space TDR. The application shall include a design in such detail as the Director shall require and a maintenance plan. The Director shall review the application pursuant to the provisions of this section, and shall approve, disapprove or conditionally approve the application. Conditions may include, without limitation, assurance of funding for long-term maintenance and dates when approvals shall expire if the open space is not developed.

C. Area Eligible for Transfer. For purposes of calculating the amount of TDR transferable under Section 23.49.014, Transfer of Development Rights (TDR), eligible area does not include any portion of the lot occupied above grade by a structure or use unless the structure or use is accessory to the open space.

D. Basic requirements. In order to qualify as a sending lot for open space TDR, the lot must include open space that satisfies the basic requirements of this subsection, unless an exception is granted by the Director pursuant to Section 23.49.039. **A** sending lot for open space TDR must:

1. Include a minimum area as follows:

a. Contiguous open space with a minimum area of fifteen thousand (15,000) square feet; or

b. A network of adjacent open spaces, which may be separated by a street right-of-way, that are physically and visually connected with a minimum area of thirty thousand (30,000) square feet;

2. Be directly accessible from the sidewalk or another public open space, including access for persons with disabilities;

3. Be at ground level, except that in order to provide level open spaces on steep lots, some separation of multiple levels may be allowed, provided they are physically and visually connected;

4. Not have more than twenty (20) percent of the lot area occupied by any above grade structures; and

5. Be located a minimum of one quarter ([1/4]) mile from the closest lot approved by the Director as a separate open space TDR sending lot.

E. Open Space Guidelines. The Director shall consider the following guidelines, and may disapprove or condition an application based on one or more of them. If the Director determines that the design for the open space will substantially satisfy the intent of the guidelines as a whole, the Director need not require that every guideline be satisfied as a condition to approval. Open space should be designed to:

1. Be well integrated with downtown's pedestrian and transit network;

2. Be oriented to promote access to sun and views and protection from wind, taking into account potential development on adjacent lots built to the maximum limits zoning allows;

3. Enhance user safety and security and ease of maintenance;

4. Be highly visible because of the relation to the street grid, topographic conditions, surrounding development pattern, or other factors, thereby enhancing public access and identification of the space as a significant component of the urban landscape;

5. Incorporate various features, such as seating and access to food service, that are appropriate to the type of area and that will enhance public use of the area as provided by the guidelines for an urban plaza in the Public Benefit Features Rule;

6. Provide such ingress and egress as will make the areas easily accessible to the general public along street perimeters;

7. Be aesthetically pleasing space that is well integrated with the surrounding area through landscaping and special elements, which should establish an identity for the space while providing for the comfort of those using it;

8. Increase activity and comfort while maintaining the overall open character of public outdoor space; and

9. Include artwork as an integral part of the design of the public space.

F. Public Access.

1. Recorded Documents. The open space must be subject to a recorded easement, or other instrument acceptable to the Director, to limit any future development on the lot and to ensure general public access and the preservation and maintenance of the open space, unless such requirement is waived by the Director for open space in public ownership.

2. Hours of Operation. The open space must be open to the general public without charge for a reasonable and predictable hours, such as those for a public park, for a minimum of **six** ***(6)*** hours each day of every week.

3. Plaque Requirement. **A** plaque indicating the nature of the site and its availability for general public access must be placed in a visible location at the entrances to the site. The text on the plaque is subject to the approval of the Director.

G. Maintenance. The property owner and/or another responsible party who shall have assumed obligations for maintenance on terms approved by the Director, shall maintain all elements of the site, including but not limited to landscaping, parking, seating and lighting, in a safe and clean condition as provided for in a maintenance plan to be approved by the Director.

HISTORY: Ord. 120443 § 15,2001.

THE SEATTLE MUNICIPAL CODE

*** THIS SECTION IS CURRENT THROUGH SEPTEMBER 2002 (ORDINANCE 120845) ***

TITLE 23 LAND USE CODE
SUBTITLE III LAND USE REGULATIONS
DIVISION 2 AUTHORIZED USES AND DEVELOPMENT STANDARDS
CHAPTER 23.49 DOWNTOWN ZONING
SUBCHAPTER I GENERAL STANDARDS

Seattle Municpal Code § 23.49.039

§ 23.49.039 Special exception for open-space TDR sites.

The Director may authorize an exception to the requirements for open space TDR sites, Section 23.49.027, as a special exception pursuant to Chapter 23.76, Procedures for Master Use Permit and Council Land Use Decisions.

A. The provisions of this section will be used by the Director in determining whether to grant, grant with condition or deny a special exception. The Director will grant exceptions only to the extent such exceptions further the provisions of this section.

B. In order for the Director to grant, or grant with conditions, an exception to the requirements for open-space TDR sites, one or more of the following must be satisfied:

1. The exception allows the design of the open-space to take advantage of unusual site characteristics or conditions in the surrounding area, such as views and relationship to surroundings; or

2. The applicant demonstrates that the exceptions would result in an open-space that better meets the intent of the provisions for open-space TDR sites in Section 23.49.027.

HISTORY: Ord. 120443 § 19,2001

THE SEATTLE MUNICIPAL CODE

*** THIS SECTION IS CURRENT THROUGH SEPTEMBER 2002 (ORDINANCE 120845) ***

TITLE 23 LAND USE CODE
SUBTITLE III LAND USE REGULATIONS
DIVISION 2 AUTHORIZED USES AND DEVELOPMENT STANDARDS
CHAPTER 23.49 DOWNTOWN ZONING
SUBCHAPTER I GENERAL STANDARDS

Seattle Municpal Code § **23.49.041**

§ **23.49.041** City/County Transfer of Development Credits (TDC) Program.

A. Use of Credits Conditioned Upon City-County Agreement. No credit floor area shall be allowed under this section unless, at the time of the Master Use Permit decision for the project proposing to use such credit floor area, an agreement is in effect between the City and King County, duly authorized by City ordinance, for the implementation of the TDC Program.

B. Credit Floor Area.

1. For purposes of this section:

a. "Credit floor area" means gross floor area allowed on a receiving lot, above the height limit otherwise applicable in the zone, as a result of the use of rural development credits and amenity credits under this section.

b. "Rural development credits" are allowances of floor area on a receiving lot, measured in gross square feet, that result from transfer of development potential from rural, unincorporated King County to the Denny Triangle Urban Village pursuant to King County Code Chapter 21A.55 or successor provisions and pursuant to the provisions of this section.

c. "Amenity credits" are allowances of floor area, measured in gross square feet, on a lot receiving development credits, which allowances are granted on condition that the owner or developer provide certain amenities, or contributions to development of amenities, in the Denny Triangle Urban Village as provided in this section.

2. Upon certification by King County that all conditions to transfer under King County ordinances and rules have been satisfied, rural development credits may be transferred directly from eligible sending sites or from the King County Transfer of Development Credit (TDC) Bank to property in DOC2 and DMC zones within the Denny Triangle Urban Village, as shown on Map **23.49.041** A, subject to compliance with all the conditions of this section.

3. Rural development credits and amenity credits are used in combination to obtain credit floor area according to the terms of this section and any implementing rules promulgated by the Director.

4. For a project that obtains credit floor area the Director may permit structure height to be increased by up to thirty (30) percent of the height limit of the zone.

5. Exckpt as may be otherwise provided in a rule promulgated by the Director under this section, the conversion ratio for rural development credits is two thousand (2,000) gross square feet of floor area on the receiving lot for each unit of available sending site credit, as determined by King County. The conversion ratio may be modified according to a rule promulgated by the Director, as he or she shall determine to be consistent with the goals of providing sufficient incentive for use of the TDC Program and of preserving the maximum amount of land in rural King County as is feasible in relation to the amount of development of credit floor area in the Denny Triangle Urban Village. Any adjusted conversion ratio shall not be less than one thousand (1,000) gross square feet of floor area for each unit of sending site credit, nor greater than three thousand (3,000) gross square feet of floor area for each unit of sending site credit. In making any modification the Director shall take into account the following factors:

a. The value of credit floor area for receiving sites in the Denny Triangle Urban Village;

b. Land value for potential sending sites in rural, unincorporated King County; and

c. Market conditions for rural development credits and, to the extent that the Director may find them relevant, market conditions for other types of credits or transferable development rights.

6. In order to obtain amenity credits, a project applicant may either enter into a voluntary agreement to provide amenities in the Denny Triangle Urban Village, or enter into a voluntary agreement to contribute financially to the development of such amenities, as provided in this subsection.

a. Amenities for which amenity credits may be obtained include and are limited to the following: provision of public open space, improvements to existing public open space, development of designated green streets or contribution to the Amenity Credit Fund.

b. The Director shall review the location and design of any amenity proposed to be provided for purposes of this section and determine whether the amenity mitigates project impacts, is consistent with applicable policies and design criteria, provides a public benefit and is adequate in quantity and quality.

c. Amenities for which amenity credits are obtained may be on a site other than the project site, provided that the amenity site is within the Denny Triangle Urban Village, is within one-quarter ([1/41) mile of the project site, and is available to the public without charge. Contributions to the Denny Triangle Amenity Credit Fund will be applied to acquisition or development of open space or green street(s) in the Denny Triangle Urban Village (and within one-quarter ([1/41) mile of the project site). Notwithstanding the foregoing, amenities may be provided within the Denny Triangle Urban Village farther than one-quarter ([1/41) mile from the project site, either directly by the applicant or through the use of a contribution by the applicant, when the applicant and the Director agree that the amenity in that location would be an appropriate mitigation for the project impacts.

d. If no amenity credits are provided directly by a project applicant, the cash contribution to the Amenity Credit Fund shall be equal to five dollars ($5.00) for each square foot of credit floor area to be used by the project (including both amenity credits and rural development credits).

e. If the applicant elects to make a contribution to the Denny Triangle Amenity Credit Fund in lieu of providing an amenity, that election shall constitute the applicant's agreement that the use of those funds for acquisition or development of any amenities meeting the requirements of this section in the Denny Triangle Urban Village is authorized and will mitigate the direct impacts of the additional residential floor area and height allowed pursuant to this section.

7. No credit floor area will be granted for any project that causes the destruction of any controlled feature of a Landmark structure.

C. Program Requirements.

1. Except as expressly provided in this subsection C, fifty (50) percent of the credit floor area on any lot must come from rural development credits and fifty (50) percent of the credit floor area obtained must come from amenity credits.

2. In order to accommodate practical difficulties in meeting the exact percentages in subsection C1 above, for example as a result of the unavailability of fractional sending site credits under King County rules, the Director may allow up to sixty (60) percent of credit floor area for a project to come from either rural development credits or from amenity credits.

3. The minimum credit floor area that may be obtained on any lot pursuant to the TDC Program is eight thousand (8,000) square feet.

4. The credit floor area obtained may be contained within a single purpose residential structure or mixed use development (residential and nonresidential uses in the same or different structures on the same lot).

5. The Director'may require, as a condition to issuance of any permit using development credits, the execution and recording of appropriate instruments by which the rural development credits are attached to the receiving lot and by which conditions and restrictions applicable in connection with the use of the rural development credits and amenity credits are documented.

D. Use of Credit Floor Area.

1. For mixed use development, the credit floor area may be occupied by residential or nonresidential uses, or any combination thereof, subject to the provisions of this subsection D.

2. If a project includes credit floor area for nonresidential uses, then it must also include a net amount of additional floor area dedicated to residential use, on the same lot and below the otherwise applicable height limit, equivalent to or greater than the amount of such nonresidential credit floor area.

3. Credit floor area does not increase the total amount of nonexempt gross floor area allowed on the receiving lot. Therefore, the floor area of nonresidential use, together with any floor area of residential use that is not exempt from FAR calculations, may not exceed the maximum FAR for the zone in which the lot is located, taking into account all bonuses, transfers of development rights, and exclusions applicable under provisions of the Land Use Code other than this section.

E. King County Certification and Security. No permit after the first building permit, and in any event no permit for any construction activity other than excavation and shoring, will be issued for development that includes credit floor area until (1) the applicant's possession of necessary rural development credits is certified by King County; and (2) either security is provided for the provision of amenities or an optional cash contribution is made, sufficient to generate the amount of amenity credits necessary under the terms of this section and any rules promulgated by the Director to implement this section.

F. Relation to Bonus and TDR Programs. The TDC Program may be combined with the transferable development rights (TDR) and bonus programs, subject to the applicable provisions for the relevant zone(s) and the following limits:

1. To the extent that bonus floor area is granted on any lot for any public benefit feature or cash contribution, that public benefit feature or cash contribution shall not generate amenity credits.

2. Credit floor area may be used to gain bonus floor area if the design and use of such credit floor area satisfies the applicable requirements of this chapter and the Public Benefit Features Rule.

G. Vesting. Vesting of any right to use credit flow area is subject to the provisions of Section 23.76.026, Vesting of development rights.

HISTORY: Ord. 120443, § 20,2001; Ord. 119728 § 4, 1999.

THE WHATCOM COUNTY CODE

*** Current through December, 2000 (Ord. 2000-045 and Res. 2000-044) ***

TITLE 20 ZONING
CHAPTER **20.89** DENSITY TRANSFER PROCEDURE

Whatcom County Code § **20.89.010**

§ **20.89.010** Purpose.

The purpose of this chapter is to establish procedures for the transfer of development rights from one property to another. Where the applicable Comprehensive Plan policies and an appropriate overlay zone or zoning map designation provide the option for transfer of development rights, the rights shall be transferred consistent with the Comprehensive Plan policies, the requirements of this chapter, and the requirements of the sending areas and receiving areas as defined in this chapter and mapped on the zoning maps.

The transfer of development rights from one property to another is allowed in order to provide flexibility and better use of land and building techniques; to help preserve critical areas, watersheds, and open space; to provide more equalization of property values between various zones than would normally be the case; and to work toward achieving county-wide land use planning goals, the objectives of subarea plans and of this title, and implementation of the goals, policies, and actions plans of the Whatcom County Comprehensive Plan.

HISTORY: (Ord. 99-087, 1999; Ord. 98-083 Exh. **A** § 60, 1998).

THE WHATCOM COUNTY CODE

*** Current through December, 2000 (Ord. 2000-045 and Res. 2000-044) ***

TITLE 20 ZONING
CHAPTER **20.89** DENSITY TRANSFER PROCEDURE

Whatcom County Code § **20.89.020**

§ **20.89.020** Definitions.

.021 "Development rights" means the residential building rights permitted to a lot, parcel or area of land under the base density of the Whatcom County Comprehensive Plan and the official Whatcom County zoning ordinance (this title), measured in maximum dwelling units per developable acre. Where land is impacted by critical area, as defined in WCC Title 16, development potential shall be demonstrated by the owner with consideration given to opportunities for cluster development. In the event of any conflict between the Comprehensive Plan and the zoning ordinance, the density standards of the Comprehensive Plan shall control. It is not the purpose of this section to create any such potential which would not otherwise exist.

.022 "Sending areas and parcels" means undeveloped or partially developed areas that are designated in this chapter or by further action of the county council as one from which it is appropriate to transfer development rights. A sending parcel or site is an undeveloped or partially developed parcel or site located in a sending area.

.023 "Receiving areas and parcels" means areas that are designated in this chapter or by further action of the county council as appropriate for residential development beyond its base density through the transfer of development rights. Additional receiving areas may be designated by the various cities in Whatcom County for the purpose of receiving transferred density pursuant to this section. A receiving parcel or site is one located in a receiving area.

.024 "Base density" means the number of dwelling units per gross acre permitted by the Comprehensive Plan and zoning ordinance for a parcel in a receiving area without the use of transfer or development rights or a density bonus.

.025 "Transfer units" means the additional units of dwellings allowed on a receiving parcel over base density through the use of transfer of development rights.

HISTORY: (Ord. 2000-005 § 3,2000; Ord. 99-087, 1999; Ord. 98-083 Exh. A §§ 61, 62, 1998).

THE WHATCOM COUNTY CODE

*** Current through December, 2000 (Ord. 2000-045 and Res. 2000-044) ***

TITLE 20 ZONING
CHAPTER **20.89** DENSITY TRANSFER PROCEDURE

Whatcom County Code § **20.89.030**

§ **20.89.030** General requirements.

.031 Development Rights. The residential development rights shall be considered as interests in real property.

.032 Transfer of Development Rights Permitted. Notwithstanding any other provisions of this code regarding residential density, including minimum lot size, minimum lot area per dwelling unit, minimum building site area and minimum lot width, the number of dwelling units permitted to be built upon a sending parcel may be transferred and built upon a receiving parcel. In approving a transfer of development rights pursuant to this chapter, the appropriate decision-making body must find that such a transfer is consistent with the Comprehensive Plan and zoning designation of the receiving parcel. Such a transfer of development rights shall only be permitted to occur under the circumstances and according to procedures set out in this chapter.

.033 Transfer Units. In any transfer of units, the sending parcel(s) may transfer all or a portion of its development rights to a receiving parcel or parcels.

HISTORY: (Ord. 99-087, 1999; Ord. 98-083 Exh. **A** § 63, 1998).

THE WHATCOM COUNTY CODE

*** Current through December, 2000 (Ord. 2000-045 and Res. 2000-044) ***

TITLE 20 ZONING
CHAPTER 20.89 DENSITY TRANSFER PROCEDURE

Whatcom County Code § 20.89.040

§ 20.89.040 Sending areas.

.041 Designation of Sending Areas. All of the lands that have been specifically designated as TDR sending areas on the official Whatcom County zoning map.

.042 Designation of Other Sending Areas. In addition to those areas which qualify as sending areas according to the official Whatcom County zoning map, the county council may approve additional areas as sending areas. Such additional areas may be approved only through the process established for amendments to the official Whatcom County zoning map and pursuant to the procedures and requirements in Chapter 20.90 WCC, Amendments.

HISTORY: (Ord. 99-087, 1999).

THE WHATCOM COUNTY CODE

*** Current through December, 2000 (Ord. 2000-045 and Res. 2000-044) ***

TITLE 20 ZONING
CHAPTER **20.89** DENSITY TRANSFER PROCEDURE

Whatcom County Code § **20.89.050**

§ **20.89.050** Receiving areas.

.051 Designated Receiving Areas. All of the areas that have been specifically designated as TDR receiving areas on the official Whatcom County zoning map.

.052 Designation of Other Receiving Areas. In addition to those areas which qualify as receiving areas according to the official Whatcom County zoning map, the county council may approve additional areas as receiving areas. Such additional areas may be approved only through the process established for amendments to the official Whatcom County zoning map and pursuant to the procedures and requirements in Chapter 20.90 WCC, Amendments and Fees.

HISTORY: (Ord. 99-087, 1999).

THE WHATCOM COUNTY CODE

*** Current through December, 2000 (Ord. 2000-045 and Res. 2000-044) ***

TITLE 20 ZONING
CHAPTER **20.89** DENSITY TRANSFER PROCEDURE

Whatcom County Code § **20.89.060**

§ **20.89.060** Procedures and requirements for certification and approval of transfer of development rights.

.061 Certification for Future Sales or Transfer. **A** future TDR transaction that is not associated with a pending development application and that is not proposing to transfer such development rights to another parcel at the time of application may be certified administratively by the Whatcom County planning and development services department. TDRs certified under this provision may be later transferred to a receiving parcel in accordance with the procedures specified in this title.

.062 Initiation. **An** application for transfer of development rights shall be initiated as follows:

(1) The process of transferring development rights shall be initiated by submittal of an application for a transfer of development rights permit (TDR permit) by the owner of the receiving parcel to the Whatcom County planning and development services department.

(2) An application for a TDR permit may only be accepted for filing concurrently with an application for the associated development project pursuant to the requirements of the Whatcom County code.

(3) The planning and development services department shall submit the TDR permit application to the appropriate decision-malung body for discretionary approval concurrently with the proposed development project according to the procedures prescribed in the Whatcom County code. If the TDR permit application is not associated with a pending development application and is not proposing to transfer such development rights to another parcel at the time of application, the application may be granted approved administratively by the Whatcom County planning and development services department.

.063 Submittal Requirements. All requirements for a TDR certification or permit shall include the following:

(1) **A** map showing the location and boundaries of the receiving parcel and sending parcel as applicable;

(2) The acreage of the receiving parcel and sending parcel as applicable;

(3) The zoning and current allowable base density of the receiving and sending parcels as applicable;

(4) Written and notarized consent to the transfer from all registered owners and lien holders of record of all property subject to the transfer of development rights;

(5) A calculation of the number of units available to be transferred to the sending parcel and the total number of dwelling units requested to be transferred to the receiving parcel as applicable. Any fraction of a unit of 0.50 or greater shall be considered as **a** whole unit.

(6) Except for purposes of certification or transfer under WCC **20.89.061,** all other submittal requirements for an application for the associated development project pursuant to the requirements of the Whatcom County code;

(7) A statement (on a form to be provided by the county) of how the sending and receiving parcels, as applicable, fulfill the criteria set forth in this chapter; and

(8) The planning and development services department may required the submission of other data, information, or drawings as deemed necessary to accomplish the purposes of this chapter.

.064 Approval Process and Criteria.

(1) The procedures for approval of a TDR permit shall be the same as for approval of the associated development project pursuant to the requirements of the Whatcom County code, except as exempted under WCC **20.89.061.** The appropriate decision-making body may approve a TDR permit only upon making the following findings:

(a) That the purposes and requirements of this chapter have been met; and

(b) That the transfer will result in the permanent preservation of open space land.

(2) Approval of an application for a TDR permit is discretionary. The hearing examiner, county council, or planning and development services department may approve, deny or conditionally approve such a permit, and may impose such conditions as it deems appropriate to accomplish the goals of this chapter and to mitigate any adverse impacts of such an application.

.065 Requirements for Final Approval. Approval of a TDR permit shall not be finalized until such times as the following have been accomplished:

(1) Final approval of the concurrent development project according to the provisions of the Whatcom County code, except as exempted under WCC **20.89.061;**

(2) Execution and recording of an instrument legally sufficient in both form and content (using a form provided by the county) to effect such development right transfer. Said instrument shall include at minimum a legal description of both the sending parcel(s) and receiving parcel(s).

(3) Recording of a deed restriction as specified by the county, on all of the sending parcels from which development rights are obtained. A copy of the recorded deed restriction shall be submitted to the planing and development services department who shall certify that all of the transferred development rights on each sending parcel are removed.

(4) The deed restriction shall be approved as to form by the prosecuting attorney. The document shall notify all owners and successors that the transfer and its concomitant restrictions shall run with the land and be binding upon all future owners. For all sending parcels, the deed restriction shall be sufficient to retire all transferred development rights upon the sending parcel in perpetuity.

HISTORY: (Ord. 99-087, 1999).

THE WHATCOM COUNTY CODE

*** Current through December, 2000 (Ord. 2000-045 and Res. 2000-044) ***

TITLE 20 ZONING
CHAPTER **20.89** DENSITY TRANSFER PROCEDURE

Whatcom County Code **$20.89.070**

§ **20.89.070** Exemptions from fees and other requirements.

.071 A development project which relies upon a transfer of development rights shall comply with all other applicable requirements of the Whatcom County code for such a project. However, in order to encourage the use of the transfer of development rights program, projects containing approved transfer units may be exempted from certain fees and requirements normally imposed by the county. Such exemption may be appropriate because there is a clear public benefit to be gained through the program in the preservation of valuable environmental and/or open space resources. In addition, exemptions from certain county fees will prevent a duplication or requirements for owners of receiving parcels who are providing open space and/or water quality protection through the purchase of transferable development rights. Any such exemptions shall only be granted pursuant to the procedures set out in this section.

.072 Upon application for a TDR permit, the applicant may make application for exemption from the per lot long plat review fee for all transfer units and up to 25 percent reduction for all other lot review fees pursuant to the Whatcom County code, uniform fee schedule. Such reduction or exemption must be approved by the director of the planning and development services department.

.073 Upon application for a TDR permit, the applicant may also apply for a reduction or exemption from the associated development, utility hookup, or traffic impact fees, other than those applied by the county for the transfer units. Such reduction or exemption must be approved by the applicable city council decision-making body.

.074 In conjunction with the TDR permit, an applicant may also apply for a reduction from open space, setback, lot coverage, landscaping and parking requirements for transfer units upon showing that such reduction will not adversely impact project residents, adjacent residents, or the character of the adjacent neighborhood. Any such reduction is discretionary and shall be approved by the appropriate decision-making body in conjunction with its review of the TDR permit and project application.

HISTORY: (Ord. 99-087, 1999).

Chapter 21A 37
GENERAL PROVISIONS -TRANSFER OF DEVELOPMENT RIGHTS (TDR)

Sections:

21A.37.010 Transfer of development rights (TDR) program - purpose.
21A.37.020 Transfer of development rights (TDR) program - sending sites.
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21A.37.070 Transfer of development rights (TDR) program - sending site certification and interagency review committee process.
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21A.37.010 Transfer of development rights (TDR) program - purpose. A. The purpose of th transfer of development rights program is to provide a voluntary, incentive-based process for permanently preserving rural resource and Urban Separator lands that provide a public benefit. The TDR provisions are intended to supplement land use regulations, resource protection efforts and open space acquisition programs and to encourage increased residential development density, especially inside cities, where it can best be accommodated with the least impacts on the natural environment and public services by:

1. Providing an effective and predictable incentive process for rural, resource and Urban Separator land property owners to preserve lands with a public benefit as described in K.C.C. 21A.37.020; and

2. Providing an efficient and streamlined administrative review system to ensure that transfers of development rights to receiving sites are evaluated in a timely way and balanced with other county goals and policies, and are adjusted to the specific conditions of each receiving site.

B. The TDR provisions in this chapter shall only apply to TDR receiving site development proposals submitted on or after September 17,2001 and applications for approval of TDR sending sites submitted on or after September 17,2001. (Ord. 14190 § 3,2001: Ord. 13274 § 1, 1998. Formerly K.C.C. 21A.55.100).

21A.37.020 Transfer of development rights (TDR) program - sending sites.

A. For the purpose of this chapter, "sending site" means the portion of the lot or lots qualified under subsection B of this section. Sending sites may only be located within rural, resource or Urban Separator areas, as designated by the King County Comprehensive Plan and may not **be** in public ownership. If the sending site consists of more than one tax lot, the lots must be contiguous. For purposes of this section, lots divided by a street are considered contiguous if the lots would share a common lot line if the street was removed. Sending sites shall be maintained in a natural state, except for lands zoned A or F, or lands zoned RA within the rural forest focus areas, or within proposed regional trail or open space sites suitable for passive recreation.

B. Qualification of a sending site shall demonstrate that the site contains a public benefit such that preservation of that benefit by transferring residential development rights to another site is in the public interest. A sending site must meet at least one of the following criteria:

1. Designation in the King County Comprehensive Plan or a functional plan as an agricultural production district or zoned A;

2. Designation in the King County Comprehensive Plan or a functional plan as forest production district or zoned F;

3. Designation in the King County Comprehensive Plan or a functional plan as within the rural forest focus area and zoned RA with a minimum of fifteen acres of forested land that is not encumbered through King County's development rights purchase program;

4. Designation in the King County Comprehensive Plan, or a functional plan as a proposed rural or resource area regional trail or rural or resource area open space site, through either:

a. designation of a specific site; or

b. identification of proposed rural or resource area regional trails or rural or resource area open space sites which meet adopted standards and criteria, and for rural or resource area open space sites, meet the definition of open space land, as defined in RCW 84.34.020;

5. Identification as habitat for federal listed endangered or threatened species in a written determination by the King County department of natural resources and parks*, Washington state Department of Fish and Wildlife, United States Fish and Wildlife Services or a federally recognized tribe that the sending site is appropriate for preservation or acquisition; or

6. Designation in the King County Comprehensive Plan as Urban Separator and zoned R-1.

C. For the purposes of the TDR program, "acquisition" means obtaining fee simple rights in real property, or a less than a fee simple right in a form that preserves in perpetuity the public benefit supporting the designation or qualification of the property as a sending site.

D. If a sending site has any outstanding code violations, the person responsible for code compliance should resolve these violations, including any required abatement, restoration, or payment of civil penalties, before a TDR sending site may be qualified by the interagency review committee created under K.C.C. 21A.37.070. However, the interagency may qualify and certify a TDR sending site with outstanding code violations if the person responsible for code compliance has made a good faith effort to resolve the violations and the proposal is in the public interest.

E. For lots on which the entire lot or a portion of the lot has been cleared or graded pursuant to a Class II, III or IV special forest practice as defined in chapter 76.09 RCW within the six years prior to application as a TDR sending site, the applicant must provide an affidavit of compliance with the reforestation requirements of the Forest Practices Act, and any additional reforestation conditions of their forest practice permit. Lots on which the entire lot or a portion of the lot has been cleared or graded without any required forest practices or county authorization, shall be not qualified or certified as a TDR sending site for six years unless the six-year moratorium on development applications has been lifted or waived. (Ord. 14199 § 240, 2001: Ord. 14190 § 4, 2001: Ord. 14045 § 59, 2001: Ord. 13274 § 4, 1998. Formerly K.C.C. 21A.55.130).

*Reviser's note: This section was amended by Ordinance 14190 § 4 and Ordinance 14199 § 240, each without reference to the other. Ordinance 14199 § 240, changed "department of parks and recreation" and "department of natural resources" to "department of natural resources and parks." Both amendments are incorporated in the publication of this section under K.C.C. 1.02.090

21A.37.030 Transfer of development rights (TDR) program - receiving sites.

A. Receiving sites shall be:

1. King County unincorporated urban sites, except as limited in subsection of D of this section, zoned R-4 through R-48, NB, CB, RB or O, or any combination thereof. The sites may also be within potential annexation areas established under the countywide planning policies; or

2. Cities where new growth is or will be encouraged under the Growth Management Act and the countywide planning policies and where facilities and services exist or where public investments in facilities and services will be made, or

3. RA-2.5 and RA-5 zoned parcels, except as limited in subsection E of this section, that meet the criteria listed in this subsection A.3 may receive development credits transferred from rural forest focus areas, and accordingly may be subdivided and developed at a maximum density of one dwelling per two and one-half acres. Increased density allowed through the designation of rural receiving areas:

a. must be eligible to be served by domestic Group A public water service;

b. must be located within one-quarter mile of an existing predominant pattern of rural lots smaller than five acres in size;

c. must not adversely impact regionally or locally significant resource areas or environmentally sensitive areas;

d. must not require public services and facilities to be extended to create or encourage a new pattern of smaller lots;

e. must not be located within rural forest focus areas; and

f. must not be located on Vashon or Maury Islands.

B. Except as provided in this chapter development of an unincorporated King County receiving site shall remain subject to all zoning code provisions for the base zone, except TDR receiving site developments shall comply with dimensional standards of the zone with a base density most closely comparable to the total approved density of the TDR receiving site development.

C. An unincorporated King County receiving site may accept development rights from one or more sending sites, up to the maximum density permitted under K.C.C. 21A.12.030 and 21A.12.040.

D. Property located within the outer boundaries of the Noise Remedy Areas as identified by the Seattle-Tacoma International Airport may not accept development rights.

E. Property located on Vashon or Maury Island may not accept development rights. (Ord. 14190 § 5,2001: Ord. 14045 § 60,2001: Ord. 13274 § 5, 1998. Formerly K.C.C. 21A.55.140).

21A.37.040 Transfer of development rights (TDR) program - calculations.

A. The number of residential development rights that an unincorporated sending site is eligible to send to a receiving site shall be determined by applying the TDR sending site base density established in subsection D of this section to the area of the sending site after the following has been deducted:

1. Any portion of the sending site already in a conservation easement or other similar encumbrance;

2. The amount of land area equal to the base density in the density and dimensions tables in K.C.C. 21A.12.030 and 21A.12.040 for the zone for each existing or proposed residential development unit within the lot or lots;

3. Any submerged land; and

4. Other areas, excluding setbacks, required by King County to remain undeveloped.

B. Any fractions of development rights that result from the calculations in subsection A of this section shall not be included in the final determination of total development rights available for transfer.

C. For purposes of calculating the amount of development rights a sending site can transfer, the amount of land contained within a sending site shall be determined as follows:

1. If the sending site is an entire tax lot, the square footage or acreage shall be determined:

a. by the King County department of assessments records; or

b. by a survey that has been prepared and stamped by a surveyor licensed in the state of Washington;

2. If the sending site is a portion of a tax lot, the square footage or acreage shall be determined by a survey that has been prepared and stamped by a surveyor licensed in the state of Washington; and

3. If the sending site consists of a lot that is divided by a zoning boundary, the square footage or acreage shall be calculated separately for each zoning classification. The square footage or acreage within each zoning classification shall be determined by the King County record of the action that established the zoning and property lines, such as an approved lot line adjustment. When such records are not available or are not adequate to determine the square footage or acreage within each zoning classification, the department of development and environmental services shall calculate the square footage or acreage through the geographic information system (GIS) mapping system.

D. For the purposes of the transfer of development rights (TDR) program, the following TDR sending site base densitites apply:

1. Sending sites designated in the King County Comprehensive Plan as Urban Separator and zoned R-1 shall have a base density of four dwelling units per acre.

2. Sending sites zoned RA outside a rural forest focus area shall have a base density consistent with the base density established in the density and dimensions tables in K.C.C.21A.12.030;

3. Sending sites zoned RA within rural forest focus areas shall have a base density of one dwelling unit per five acres for transfer purposes only;

4. Sending sites zoned A-10 and A-35 within the agricultural production district shall have a base density of one dwelling unit per five acres for transfer purposes only; and

5. Sending sites zoned F within the forest production district shall have a base density of one dwelling unit per eighty acres or one dwelling unit per each lot that is between fifteen and eighty acres in size for transfer purposes only.

E. A sending site may send one development right for every legal lot created on or before September 17, 2001 if that number is greater than the number of development rights determined under subsection A of this section.

F. The number of development rights that a King County unincorporated rural or natural resources land sending site is eligible to send to a King County incorporated urban area receiving site shall be determined through the application of a conversion ratio established by King County and the incorporated municipal jurisdiction. The conversion ratio will be applied to the number of available sending site development rights determined under subsection A or E of this section.

G. Development rights from one sending site may be allocated to more than one receiving site and one receiving site may accept development rights from more than one sending site.

H. The determination of the number of residential development rights a sending site has available for transfer to a receiving site shall be valid for transfer purposes only, shall be documented in a TDR certificate letter of intent and shall be considered a final determination, not to be revised due to changes to the sending site's zoning.

I. The number of residential development rights that a sending site with RA, A or F zoning is eligible to send to an urban area receiving site shall be determined by applying twice the base density allowed for transfer purposes as specified in subsection **D** of this section. (Ord. 14190 § 6, 2001: Ord. 14045 § 61,2001: Ord. 13274 § 6,1998. Formerly K.C.C. 21A.55.150).

21A.37.050 Transfer of development rights (TDR) program - development limitations.

A. Following the transfer of residential development rights from a sending site, the portion of the lot or lots not designated as a sending site may accommodate residential dwelling units on the buildable portion of the parcel or parcels or be subdivided, consistent with the zoned base density provisions of the density and dimensions tables in K.C.C. 21A.12.030 and 21A.12.040, the allowable dwelling unit calculations in K.C.C. 21A.12.070 and other King County development regulations. For sending sites zoned RA, the subdivision potential remaining after a density transfer may only be actualized through a clustered subdivision, short subdivision or binding site plan that creates a permanent preservation tract as large or larger than the portion of the subdivision set aside as lots. Within rural forest focus areas, resource use tracts shall be at least fifteen acres of contiguous forest land.

B. Nonresidential uses on lots zoned RA, A and F shall be limited as follows:

1. Only those uses directly related to, and supportive of the criteria under which the site qualified are allowed on the portion of the lot designated as a sending site. The limitations shall be included in the conservation easement.

2. The portion of the lot outside the sending site may develop nonresidential uses consistent with the zone. (Ord. 14190 § 7, 2001).

21A.37.060 Transfer of development rights (TDR) program - documentation of restrictions.

A. Following the transfer of development rights from a sending site, deed restrictions documenting the development rights transfers shall be recorded by the department of natural resources and notice placed on the title to the sending site parcel.

B. 'A conservation easement granted to the county or other appropriate land management agency shall be required for land contained in the sending site. The Conservation easement shall be documented by a map. The conservation easement may be placed on the entire lot or lots or only the portion of the lot or lots that is qualified as the sending site. The conservation easement shall indicate the portion of the lot or lots restricted from future residential development, or limitations on future residential and nonresidential development within the conservation easement, whether or not the land is dedicated, as follows:

1. A conservation easement, which contains the easement map, shall be recorded on the entire sending site to indicate development limitations on the sending site;

2. For a sending site zoned A-10 or A-35, the conservation easement shall be consistent in form and substance with the purchase agreements used in the agricultural land development rights purchase program. The conservation easement shall preclude subdivision of the subject property but may permit not more than one dwelling per sending site, and shall permit agricultural uses as provided in the A-10 or A-35 zone;

3. For a sending site located within a rural forest focus area, the sending site shall be a minimum of twenty acres. The conservation easement shall require that fifteen acres of contiguous forest land be restricted to forest management activities and shall include a forest stewardship plan approved by the county for ongoing forest management practices. The Forest Stewardship Plan shall include a description of the site's forest resources and the long term forest management objectives of the property owner, and shall not impose standards that exceed Title 222 of the Washington Administrative Code. No more than one dwelling unit is allowed for every twenty acres. The dwelling unit is to remain with the unrestricted portion of the conservation easement or unencumbered portion of the sending site;

4. For a rural sending site located outside a rural forest focus area the conservation easement shall allow for restoration, maintenance or enhancement of native vegetation. A present conditions report shall be required to document the location of native vegetation. If residential development will be allowed on the site under the conservation easement, the present conditions report shall be used to guide the location of residential development;

5. For a sending site qualifying as habitat for federal listed endangered or threatened species, the Conservation easement shall be placed on the portion of the lot or lots needed for habitat protection. The conservation easement shall allow for restoration, maintenance or enhancement of native vegetation. **A** present conditions report shall be required to document the location of native vegetation. If residential development will be allowed on the site under the conservation easement, the present conditions report shall be used to guide the location of residential development; and

6. For a sending site zoned F, the conservation easement shall encumber the entire sending site. Lots between fifteen acres and eighty acres in size are not eligible to participate in the TDR program if they include any existing dwelling units intended to be retained, or if a new dwelling unit is proposed. For eligible lots between fifteen acres and eighty acres in size, the sending site must include the entire lot. For lots greater than eighty acres in size, the sending site shall be a minimum of eighty acres. The conservation easement shall permit forestry uses subject to a forest stewardship plan approved by the county for ongoing forest management practices. The Forest Stewardship Plan shall include a description of the site's forest resources and the long term forest management objectives of the property owner, and shall not impose standards that exceed Title 222 of the Washington Administrative Code. (Ord. 14190 § 8,2001).

21A.37.070 Transfer *of* development rights (TDR) program - sending site certification and **interagency** review committee process.

A. An interagency review committee, chaired by the directors of the department of development and environmental services and the department of natural resources and parks, or their designees, shall be responsible for qualification of sending sites. Determinations on sending site certifications made by the committee are appealable to the examiner pursuant to K.C.C. 20.24.080. The department of natural resources and parks shall be responsible for preparing a written report, which shall be signed by the director of the department of natural resources and parks or the director's designee, documenting the review and decision of the committee. The committee shall issue a **TDR** certification letter within sixty days of the date of submittal of a completed sending site certification application.

B. Responsibility for preparing a completed application rests exclusively with the applicant. Application for sending site certification shall include:

1. A legal description of the site;
2. A title report;
3. A brief description of the site resources and public benefit to be preserved;
4. A site plan showing the proposed conservation easement area, existing and proposed dwelling units, submerged lands, any area already in a conservation easement or other similar encumbrance and any other area, except setbacks, required by King County to remain open;

5. Assessors map or maps of the lot or lots;

6. A statement of intent indicating whether the property ownership, after TDR certification, will be retained in private ownership or dedicated to King County or another public or private nonprofit agency;

7. Any or all of the following written in conformance with criteria established through a public rule consistent with K.C.C. chapter 2.98, if the site is qualifying as habitat for a threatened or endangered species:

a. a wildlife habitat conservation plan;

b. a wildlife habitat restoration plan; or

c. a wildlife present conditions report;

8. A forest stewardship plan, written in conformance with criteria established through a public rule consistent with K.C.C. chapter 2.98, if required under K.C.C. 21A.37.060B.3 and 6;

9. An affidavit of compliance with the reforestation requirements of the Forest Practices Act and any additional reforestation conditions of the forest practices permit for the site, if required under K.C.C. 21A.37.020E.

10. A completed density calculation worksheet for estimating the number of available development rights, and

11. The application fee consistent with K.C.C. 27.36.020. (Ord. 14561 § 28, 2002: Ord. 14199 § 241,2001: Ord.14190 § 9,2001: Ord. 13274 § 7, 1998. Formerly K.C.C. 21A55.160).

21A.37.080 Transfer of development rights (TDR) program - transfer process.

A. TDR development rights where both the proposed sending and receiving sites would be within unincorporated King County shall be transferred using the following process:

1. Following interagency review committee review and approval of the sending site application as described in K.C.C. 21A.37.070 the interagency review committee shall issue a TDR certificate letter of intent, agreeing to issue a TDR certificate in exchange for the proposed sending site conservation easement. The sending site owner may then market the TDR sending site development rights to potential purchasers. If a TDR sending site that has been reviewed and approved by the interagency review committee changes ownership, the TDR certificate letter of intent may be transferred to the new owner if requested in writing to the department of natural resources by the person or persons that owned the property when the TDR certificate letter of intent was issued, provided that the documents evidencing the transfer of ownership are also provided to the department of natural resources;

2. In applying for receiving site approval, the applicant shall provide the departmeht of development and environmental services with one of the following:

a. a TDR certificate letter of intent issued in the name of the applicant,

b. a TDR certificate letter of intent issued in the name of another person or persons and a copy of a signed option to purchase those TDR sending site development rights,

c. a TDR certificate issued in the name of the applicant, or

d. a TDR certificate issued in the name of another person or persons and a copy of a signed option to purchase those TDR sending site development rights;

3. Following building permit approval, but before building permit issuance by the department of development and environmental services or following preliminary plat approval or preliminary short plat approval, but before final plat or short plat recording of a receiving site development proposal which includes the use of TDR development rights, the receiving site applicant shall deliver the TDR certificate issued in the applicant's name for the number of TDR development rights being used and the TDR extinguishment document to the county;

4. When the receiving site development proposal requires a public hearing under this title or Title 19A or its successor, that public hearing shall also serve as the hearing on the TDR proposal. The reviewing authority shall make a consolidated decision on the proposed development and use of TDR development rights and consider any appeals of the TDR proposal under the same appeal procedures set forth for the development proposal; and

5. When the development proposal does not require a public hearing under this title or Title 19A, the TDR proposal shall be considered along with the development proposal, and any appeals of the TDR proposal shall be considered under the same appeal procedures set forth for the development proposal.

6. Development rights from a sending site shall be considered transferred to a receiving site when a final decision is made on the TDR receiving area development proposal, the sending site is permanently protected by a completed and recorded land dedication or conservation easement, notification has been provided to the King County assessor's office and a TDR extinguishment document has been provided to the department and the King County department of natural resources, or their successor agencies.

B. TDR development rights where the proposed receiving site would be within an incorporated King County municipal jurisdiction shall be reviewed and transferred using that jurisdiction's development application review process. (Ord. 14190 § 10, 2001: Ord. 13274 § *8,* 1998. Formerly K.C.C. 21A.55.170).

21A.37.090 Transfer of development rights (TDR) program - notice. Public notice consistent with the provisions of K.C.C. 20.20.060 for Type Four land use decisions shall be provided for parcels identified as TDR receiving sites. (Ord. 14190 § 11, 2001: Ord. 13274 § 9, 1998. Formerly K.C.C. 21A.55.180).

21A.37.100 Transfer of development rights (TDR) bank -- purpose. The purpose of the TDR bank is to assist in the implementation of the transfer of development rights (TDR) program by purchasing and selling development rights. The TDR bank may purchase development rights only from sending sites located in the rural area or in an agricultural or forest production district as designated in the King County Comprehensive Plan. Development rights purchased from the TDR bank may only be used for receiving sites in cities or in the urban unincorporated area as designated in the King County Comprehensive Plan. (Ord. 14190 § 12,2001: Ord. 14045 § 62,2001: Ord. 13733 § 8,2000. Formerly K.C.C. 21A.55.200).

21A.37.110 Transfer of development rights (TDR) bank expenditure and purchase authorization.

A. The TDR bank may purchase development rights from qualified sending sites at prices not to exceed fair market value and to sell development rights at prices not less than fair market value. The TDR bank may accept donations of development rights from qualified TDR sending sites.

B. The TDR bank may use funds to facilitate development rights transfers. These expenditures may include, but are not limited to, establishing and maintaining internet web pages, marketing TDR receiving sites, procuring title reports and appraisals and reimbursing the costs incurred by the department of natural resources and parks, water and land resources division, or its successor, for administering the TDR bank fund and executing development rights purchases and sales.

C. The TDR bank fund shall not be used to cover the cost of identifying and qualifying sending and receiving sites, or the costs of providing staff support for the TDR interagency review committee or the department of natural resources and parks. (Ord. 14561 § 29, 2002: Ord. 14199 § 242, 2001: Ord. 14190 § 13: Ord. 13733 § 10, 2000. Formerly K.C.C. 21A.55.210).

21A.37.120 Transfer of development rights (TDR) program - administration of TDR bank.

A. The department of natural resources and parks, water and land resources division, or its successor, shall administer the TDR bank fund and execute purchases and sales of development rights in a timely manner consistent with policy set by the TDR executive board. These responsibilities include, but are not limited to:

1. Managing the TDR bank fund;
2. Authorizing and monitoring expenditures;
3. Keeping records of the dates, amounts and locations of development rights purchases and sales;
4. Executing development rights purchases, sales and conservation easements; and
5. Providing periodic summary reports of TDR bank activity for TDR executive board consideration.

B. The department of natural resources and parks, water and land resources division, or *its* successor, in executing purchase and sale agreements for acquisition of development rights shall ensure sufficient values are being obtained and that all transactions, conservation easements or fee simple acquisitions are consistent with public land acquisition guidelines. (Ord. 14199 § 243, 2001: Ord. 14190 § 14,2001: Ord. 13733 § 11, 2000. Formerly K.C.C. 21A.55.220).

21A.37.130 Transfer of development rights (TDR) program - sale of TDR rights by TDR bank.

A. The sale of development rights by the TDR bank shall be at a price that equals or exceeds the fair market value of the development rights. The fair market value of the development rights shall be established by the department of natural resources and shall be based on the amount the county paid for the development rights and the prevailing market conditions.

B. When selling development rights, the TDR bank may select prospective purchasers based on the price offered for the development rights, the number of development rights offered to be purchased, and the potential for the sale to achieve the purposes of the TDR program.

C. The TDR bank may sell development rights only in whole or half increments to incorporated receiving sites through an interlocal agreement. The TDR bank may sell development rights only in whole increments to unincorporated King County receiving sites.

D. All offers to purchase development rights from the TDR bank shall be in writing, shall include a certification that the development rights, if used, shall be used only inside an identified city or within the urban unincorporated area, include **a** minimum ten-percent down payment with purchase option, shall include the number of development rights to be purchased, proposed purchase price and the required date or dates for completion of the sale, not later than one hundred twenty calendar days after the date of receipt by King County of the purchase offer.

E. Payment for purchase of development rights from the TDR bank shall be in full at the time the development rights are transferred unless otherwise authorized by the department of natural resources and parks. (Ord. 14199 § 244, 2001: Ord. 14190 § 15, 2001: Ord. 13733 § 12, 2000. Formerly K.C.C. 21A.55.230).

21A.37.140 Transfer of development rights (TDR) program - requirements for transfers by the TDR bank for use in incorporated receiving areas.

A. For development rights sold by the TDR bank to be used in incorporated receiving site areas, the county and the affected city or cities must first have executed an interlocal agreement and the city or cities must have enacted appropriate legislation to implement the program for the receiving area.

B. At a minimum, each interlocal agreement shall describe the legislation that the receiving jurisdiction adopted or will adopt to allow the use of development rights, shall identify the receiving area, shall require the execution of a TDR extinguishment document in conformance with K.C.C. 21A.37.080, and should address the conversion ratio to be used in the receiving site area. If the city is to receive any amenity funds, the interlocal agreement shall set forth the amount of funding and the amenities to be provided in accordance with K.C.C. 21A.37.150 I. Such an interlocal agreement may also indicate that a priority should be given by the county to acquiring development rights from sending sites in specified geographic areas. If a city has a particular interest in the preservation of land in a rural or resource area or in the specific conditions on which it will be preserved, then the interlocal agreement may provide for periodic inspection or special terms in the conservation easement to be recorded against the sending site as a pre acquisition condition to purchases of development rights within specified areas by the TDR bank.

C. A TDR conversion ratio for development rights purchased from a sending site and transferred to an incorporated receiving site.area may express the amount of additional development rights in terms of any combination of units, floor area, height or other applicable development standards that may be modified by the city to provide incentives for the purchase of development rights. (Ord. 14190 § 16, 2001: Ord. 13733 § 13,2000. Formerly K.C.C. 21A.55.240).

21A.37.150 Transfer of development rights (TDR) program - restrictions on expenditure of TDR bank funds on TDR amenities.

A. Expenditures by the county for amenities to facilitate development rights sales shall be authorized by the TDR executive board during review of proposed interlocal agreements, and should be roughly proportionate to the value and number of development rights anticipated to be accepted in an incorporated receiving site pursuant to the controlling interlocal agreement, or in the unincorporated urban area, in accordance with K.C.C. 21A.37.040.

B. The county shall not expend funds on TDR amenities in a city before execution of an interlocal agreement, except that:

1. The executive may authorize up to twelve thousand dollars be spent by the county on TDR amenities before a development rights transfer for use at a receiving site or for the execution of an interlocal agreement if the TDR executive board recommends that the funds be spent based on a finding that the expenditure will expedite a proposed transfer of development rights or facilitate acceptance of a proposed transfer of development rights by the community around a proposed or established receiving site area;

2. King County may distribute the funds directly to a city if a scope of work, schedule and budget governing the use of the funds is mutually agreed to in writing by King County and the affected city. Such an agreement need not be in the form of an interlocal agreement; and

3. The funds may be used for project design renderings, engineering or other professional services performed by persons or entities selected from the King County approved architecture and engineering roster maintained by the department of finance or an affected city's approved architecture and engineering roster, or selected by an affected city through its procurements processes consistent with state law and city ordinances.

C. TDR amenities may include the acquisition, design or construction of public art, cultural and community facilities, parks, open space, trails, roads, parking, landscaping, sidewalks, other streetscape improvements, transit-related improvements or other improvements or programs that facilitate increased densities on or near receiving sites.

D. When King County funds amenities in whole or in part, the funding shall not commit the county to funding any additional amenities or improvements to existing or uncompleted amenities.

E. King County funding of amenities shall not exceed appropriations adopted by the council or funding authorized in interlocal agreements, whichever is less.

F. Public transportation amenities shall enhance the transportation system. These amenities may include capital improvements such as passenger and layover facilities, if the improvements are within a designated receiving area or within one thousand five hundred feet of a receiving site. These amenities may also include programs such as the provision of security at passenger and layover facilities and programs that reduce the use of single occupant vehicles, including car sharing and bus pass programs.

G. Road fund amenities shall enhance the transportation system. These amenities may include capital improvements, such as streets, traffic signals, sidewalks, street landscaping, bicycle lanes and pedestrian overpasses, if the improvements are within a designated receiving site area or within one thousand five hundred feet of a receiving site. These amenities may also include programs that enhance the transportation system.

H. All amenity funding provided by King County to cities to facilitate the transfer of development rights shall be consistent with federal, state and local laws.

I. The timing and amounts of funds for amenities paid by King County to each participating city shall be determined in an adopted interlocal agreement. The interlocal agreement shall **set** forth the amount of funding to be provided by the county, an anticipated scope of work, work schedule and budget governing the **use** of the amenity funds. Except for the amount of funding to be provided by the county, these terms may be modified by written agreement between King County and the city. Such an agreement need not be in the form of an interlocal agreement. Such an agreement must be authorized by the TDR executive board. If amenity funds are paid to a city to operate a program, the interlocal agreement shall set the period during which the program is to be funded by King County.

J. A city that receives amenity funds from the county is responsible for using the funds for the purposes and according to the terms of the governing interlocal agreement.

K. To facilitate timely implementation of capital improvements or programs at the lowest possible cost, King County may make amenity payments as authorized in an interlocal agreement to a city before completion of the required improvements or implementation programs, as applicable. If all or part of the required improvements *or* implementation programs in an interlocal agreement to be paid for from King County funds are not completed by a city within five years from the date of the transfer of amenity funds, then, unless the funds have been used for substitute amenities by agreement of the city and King County, those funds, plus interest, shall be returned to King County and deposited into the originating amenity fund for reallocation to other TDR projects.

L. King County is not responsible for maintenance, operating and replacement costs associated with amenity capital improvements inside cities, unless expressly agreed to in an interlocal agreement. (Ord. 14190 § 17, 2001: Ord. 13733 § 14, 2000. Formerly K.C.C. 21A.55.250).

211137.160 Transfer of development rights (TDR) program - establishment and duties of the TDR executive board.

A. The TDR executive board is hereby established. The TDR executive board shall be composed of the director of the budget office, the director of the department of natural resources and parks, the director of the department of transportation, the director of finance and the director of the office of business relations and economic development, or their designees. A representative from the King County council staff, designated by the council chair, may participate as an ex officio, nonvoting member of the TDR executive board. The TDR executive board shall be chaired by the director of the department of natural resources and parks or that director's designee.

B. The issues that may be addressed by the executive board include, but are not limited to, using site evaluation criteria established by administrative rules, ranking and selecting sending sites to be purchased by the TDR bank, recommending interlocal agreements and the provision of TDR amenities, if any, to be forwarded to the executive, identifying future funding for amenities in the annual budget process, enter into other written agreements necessary to facilitate density transfers by the TDR bank and otherwise oversee the operation of the TDR bank to measure the effectiveness in achieving the policy goals of the TDR program.

C. The department of natural resources and parks shall provide lead staff support to the TDR executive board. Staff duties include, but are not limited to:

1. Making recommendations to the TDR executive board on TDR program and TDR bank issues on which the TDR executive board must take action;

2. Facilitating development rights transfers through marketing and outreach to the public, community organizations, developers and cities;

3. Identifying potential receiving sites;

4. Developing proposed interlocal agreements with cities;

5. Assisting in the implementation of TDR executive board policy in cooperation with other departments;

6. Ranking certified sending sites for consideration by the TDR executive board;

7. Negotiating with cities to establish city receiving areas with the provision of amenities;

8. Preparing agendas for TDR executive board meetings;

9. Recording TDR executive board meeting summaries;

10. Preparing administrative rules in accordance with K.C.C. chapter 2.98 to implement this chapter; and

11. Preparing annual reports on the progress of the TDR program to the council with assistance from other departments. (Ord. 14561 § 30,2002: Ord. 14199 § 245,2001: Ord. 14190 § 18, 2001: Ord. 13733 § 15, 2000. Formerly K.C.C. 21A.55.260).

21A.37.170 Transfer of development rights (TDR) program - exemption from surplus provisions. The transfer of development rights from the TDR bank may be completed consistent with King County's needs and in accordance with the criteria of this chapter. The transfers are exempt from the real and personal property provisions of K.C.C. chapter 4.56. (Ord. 14190 § 19, 2001: Ord. 13733 § 16, 2000. Formerly K.C.C. 21A.55.270).

APPENDIX C

Growth Management Services

SEPA and the Promise of the GMA: Reducing the Costs of Development

Washington State Department of
Community, Trade and Economic Development

Martha Choe, Director

SEPA and the Promise of the GMA: Reducing the Costs of Development

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Summary

David Evans and Associates Inc. (DEA) conducted 15 case studies to evaluate examples of the integration of the Growth Management Act (GMA) and the State Environmental Policy Act (SEPA) since the adoption of the Regulatory Reform Act of 1995. The selected case studies included rural, urban, redevelopment, new development, master planned resorts, master planned sites, multijurisdictions, one GMA jurisdiction planning for natural resource lands and critical areas only, and one Pre-Regulatory Reform Act project. The jurisdictions involved included 13 cities, one county, and one port district. The majority of the case studies (eight) were subarea or master plans with accompanying environmental impact statements (EISs) that resulted in the designation of planned actions under SEPA, but other integration processes were also represented. One case study involved the use of the Nonproject Review Fonn and another case study was on an EIS for an industrial park in a GMA jurisdiction planning for natural resource lands and critical areas only.

For each case study, DEA reviewed materials provided by the Washington Department of Community, Trade and Economic Development (CTED) and the jurisdiction. These typically included published articles primarily in local papers or CTED's newsletters, summary pages from EISs, and in a few cases the planned action ordinances. After sending introductory materials, DEA interviewed each jurisdiction using a questionnaire developed jointly with CTED. DEA recorded the interviews on answer sheets and used these as the basic data gathering tool. CTED reviewed the answer sheets and raised additional questions. DEA revised the answer sheets and in some cases conducted additional interviews of the agency staff.

DEA's summary of the results is broken down into the categories of benefit/costs and lessons learned, as these are the overall objectives of the project. Under benefits/costs, we have further divided the summary into financial findings and responses to the benefit/cost assumptions prepared by CTED. The lessons learned summary attempts to capture our professional judgments on what worked and what didn't work. These are not facts. What didn't work in one situation may work in another.

Benefit/Cost – Avoided Direct Costs

One of the underlying assumptions to the Regulatory Refonn Act is that there are cost savings to be had by front-loading the environmental review during the planning process. Another assumption is that there are significant benefits from streamlining the permit process. DEA attempted to evaluate these assumptions in its interviews and data analysis. DEA collected three types of financial data: (1) project costs incurred by the agency including staff and consultant costs, (2) investment values of the projects approved under the designated planned action ordinances, and (3) estimates of the **SEPA** costs avoided as a consequence of qualifying as a planned action project.

The project costs and the avoided SEPA costs are direct costs to the agency and the developer. Our SEPA cost model is outlined in the Cost Benefit Analysis section. DEA

has been conservative on the estimates of avoided costs and in all likelihood these would be higher. Not all of the case studies had projects approved from which DEA could derive avoided SEPA costs. The table below summarizes DEA's findings on direct costs.

Jurisdiction (number of approved planned actions or projects)	Project Costs	Avoided Costs (equal benefits)	Net Benefits or Net Costs	Comments
Redmond (6)	$660,000	$498,000	($162,000)	More actions likely, net cost will change to net benefit
Mill Creek (6)	$170,000	$496,000	$326,000	More planned actions will increase net benefits
Tacoma (8) – these are projects not planned actions	*$255,000*	$144,800	($110,200)	More projects likely, net cost will change to net benefit
Tukwila (32)	$200,000	$866,000	$666,000	More planned actions will increase net benefits
Vancouver (4)	***$5*** 15,000	$414,000	($100,000)	More planned actions likely, net cost will change to net benefit
Everett (27)	$530,000	$1,236,000	$706,000	More planned actions will increase net benefits
Totals	**$2,330,000**	**$3,654,800**	**$1,324,800**	

DEA has drawn several conclusions from the data:

- All of the case studies will eventually achieve a net benefit in direct costs. Even GMA plans that did not result in the adoption of a Planned Action Ordinance will result in the reduction of SEPA costs for projects within the planning area because of the additional environmental review done at the plan stage.
- The public bears the bulk of the planning and environmental costs at the front end while the public and private sector split the avoided SEPA costs about evenly at the

project level. The developer avoids the costs of preparing SEPA documents and the public reduces the administrative costs of review.

- The avoided SEPA costs, while not overwhelming, are significant to developers making decisions about where to build.

Benefit/Costs – Investment Value

Avoided SEPA costs are a tangible benefit, but only one type of benefit. Predictability, especially the component of reduced and more certain application review and processing time, is another benefit that was consistently stressed in the interviews as an overall objective. It was also noted in comments made by developers. Increasing the predictability amounts to reducing the risk and thereby increasing the return on investment.

Measuring risk reduction is difficult because it is somewhat a subjective evaluation. However, DEA's research revealed some common themes. First, developers viewed positively the adoption of design guidelines that spelled out what was acceptable. This was particularly the case where the developers were involved in the development of the design guidelines so that they had confidence that the end products would be marketable. Second, streamlining the permit process meant that developers got to "yes" sooner. The streamlining took the form of prioritizing planned actions ahead of other projects, eliminating public hearings through regulatory changes, and eliminating the SEPA appeal process through the planned action designation. Third, the fact that jurisdictions were willing to share the risk by committing their own resources was important. This commitment took many forms including adding targeted capital improvement projects, reducing taxes, accepting greater liability, and preparing the environmental analysis in support of the planning effort.

DEA attempted to gauge the relative importance of these themes by using the investment value of the projects approved within the planning area since the adoption of the plan. DEA chose investment value because it represents the end product of the developer's risk assessment process. We asked ourselves if this development would have located here if the jurisdiction had not engaged in the designation of a planned action or other regulatory reform process. Alternatively, did the reduction in risk influence the timing of the development such that the developer decided to proceed sooner rather than later.

DEA obtained the investment values through the interview process. In most cases, the values come from the permit applications. Where the jurisdiction did not have the investment value, DEA attempted to estimate it by examining the type of project and attaching a value to it. For example, DEA used a per square foot value for commercial space and per unit value for residential projects. The table below shows the investment values for the case studies where projects were in progress or approved.

Jurisdiction and Case Study	Investment Value (estimated)	Directly Related to SEPA/GMA Integration	Comments
coma – Thea Foss	$278,000,000	Yes	None of the projects likely would have gone forward without the city's investment.
Vancouver – Esther Short Redevelopment	$150,000,000	Yes	Most if not all the projects are directly related to the city's investments and planned action.
Renton – Southport Redevelopment	$100,000,000	Yes	The single developer on this site would not have proceeded without the city's planned action ordinance and investments.
Mill Creek – SR 527 Corridor Subarea Plan	$200,000,000	Some	Some of the projects likely would have proceeded even without the planned action ordinance.
Everett – Southwest Everett/Paine Field Subarea Plan	$200,000,000	Some	Some of the projects likely would have proceeded even without the planned action ordinance.
Redmond – Overlake Neighborhood Plan	$1,200,000,000	Some	Some of the projects likely would have proceeded even without the planned action ordinance.
Tukwila – MIC Subarea Plan	$156,000,000	Some	Some of the projects likely would have proceeded even without the planned action ordinance.
Kittitas County – MountainStar Master Planned Resort	$150,000,000	No	In all likelihood, the single developer would have done the project without the planned action ordinance.
Anacortes – Fidalgo Bay Subarea Plan	$20,000,000	Yes	The one project approved is directly related to the adoption of the integrated subarea plan and EIS.

DEA has drawn some conclusions based on these data:

- With one exception, the integrated SEPNGMA procedures have been influential in spurring investment in local communities.
- In at least three cases, the adoption of a Planned Action Ordinance along with the plan itself was critical either to the agency's objectives or the developer's risk assessment. In these cases, the elimination of the SEPA appeal process was a specific objective.
- In the other cases, the Planned Action Ordinance was only part of the package. Equallyimportant were the other commitments made by the jurisdiction such as expedited permit processing, liability reduction, tax deferral, capital improvement projects, capacity analysis, revised design regulations, public and community support, and other factors.
- Developers view integrated SEPNGMA procedures positively when making risk assessment decisions about where and when to develop.
- More than $500 million in investment is directly tied to integrated SEPNGMA actions, especially designated planned actions.
- Integrated SEPA/GMA actions influenced another $1.756 billion in investment, again with special emphasis on designated planned actions

It is important to recognize that all of the GMA plans increase predictability and spur investment. What is special about designated planned actions is that they eliminate a source of unpredictability, the SEPA appeal process. One example from these case studies highlights this unpredictability. The City of Longview's Mint Farm Industrial Park EIS was intended to be comprehensive in scope and address all major issues related to development of Phase 1 and 2. As a GMA jurisdiction planning for resource lands and critical areas only, Longview cannot use such GMA authorized integration tools as planned actions. The first project application received a declaration of nonsignificance (DNS) without appeals. The second project application for a large-scale power plant facility received a mitigated determination of nonsignificance (MDNS) based on an expanded checklist. Community opposition related to labor issues resulted in a SEPA appeal. The appeal was dropped after the labor issues were settled.

There is no question that many within the development community believe SEPA is used to delay or stop projects that are otherwise allowed under local regulations. And there are certainly examples of opponents using SEPA to exact concessions or money from developers in exchange for dropping appeals. These case studies support the premise that developers view favorably jurisdictions with subarea or other plans that include a limitation on SEPA appeals. This can be done either through the designated planned action process, conducting detailed environmental analysis at the planning stage sufficient to withstand a challenge, or developing sufficient community support to reduce the risk of opposition to a project. All of these were successful tactics in the case studies.

Benefit/Costs – CTED Assumptions

CTED prepared a list of assumptions about the benefits and costs of SEPA/GMA integration methods and included it as an attachment to the Request for Proposals. Those assumptions are listed in italics below and DEA has attempted to address them based on the case studies.

Communities and sites that can demonstrate their capacity to support the needs of specific land uses will be more competitive in attracting those uses.

True. The best example from the case studies in support of this assumption is the Esther Short Redevelopment Project. Vancouver competes directly with its bigger neighbor to the south, Portland, for downtown development projects. Demonstrating adequate capacity through the EIS was one factor in attracting developers to the project.

Uses proposed in communities and on sites that are adequately prepared for them can obtain development permits more quickly and with less cost.

True. This assumption applies to both integrated and traditional SEPA and GMA processes. The distinction is between project level environmental analysis versus detailed plan level environmental analysis. For example, even though Anacortes was unsuccessful in developing a designated planned action for the Fidalgo Bay Subarea Plan, the plan itself provided important guidance to developers and gave them the predictability necessary to proceed with projects. Projects are still required to conduct detailed environmental review, but the design guidelines spell out what is acceptable to Anacortes thereby increasing the predictability of the review process.

Shorter time and lower expenses required for obtaining development permits are important factors in decisions to locate new or expand existing development.

True. As one developer stated, "Time is money." However, it is probably accurate to conclude that time is more important than money. By this we mean that the avoided SEPA costs, while not insignificant, are probably not project busters. More important is getting to "yes" quickly and with certainty. This takes on special importance when developers are considering sites in other states in their site selection decision making.

Time and expense associated with obtaining permits are best reduced by avoiding environmentally sensitive locations and communities lacking the capacity to accommodate water, power, waste, transportation, workforce, housing, or other factors important to the success of the proposed use.

Partially true. The jurisdictions with successful planned actions or other SEPA review streamlining actions avoided environmentally sensitive lands. For example, Tukwila excluded shorelines from the Planned Action Ordinance. Vancouver did not include shorelines in the subarea plan because of the permitting difficulties. Mill Creek excluded

wetlands from its Planned Action Ordinance. The major reason given was the time and expense to analyze the impacts to these natural resources in the planned action EIS was prohibitive. Anacortes' experience was supportive of this conclusion as well. Despite spending significant money on consultants, they were unsuccessful in persuading the resource agencies to approve impacts to eelgrass habitat at a plan level.

As to the second part of the assumption, the data are inconclusive. Most of the communities in the case studies had the infrastructure or were willing to spend public money to upgrade it to accommodate the projects.

Mitigating and remediating impacts to the natural environment, infrastructure, and community facilities and services is more expensive than avoiding impacts, especially if social costs are factored in.

Inconclusive. DEA did not gather data on the question of mitigation versus avoidance. For example, traffic impact fees are a form of mitigation. The case studies did not address whether developers avoided jurisdictions with traffic impact fees over those without.

Quality of life is an important factor in many development location decisions.

Inconclusive. DEA did not interview developers or agency staff on the reasons for locating a development in a particular location.

Quality of life values are maintained or enhanced by avoiding impacts to the natural environment, infrastructure, and community facilities and services.

Inconclusive. DEA did not measure quality of life. There are inherent difficulties with this assumption because of the value judgments people place on quality of life.

Adequately preparing communities and potential development sites begins with planning and environmental review, consisting of a comparison between community and site characteristics and physical, social, and environmental requirements and impacts of particular types of development. Investments in infrastructure and the community may be necessary to fill gaps in the level of preparedness.

True. The redevelopment plans typically had significant public investments in infrastructure and the community. For example, Vancouver committed five publicly owned parcels within the planning area as incentives to attract development. Tacoma invested millions of dollars in the clean up of the Thea Foss Waterway in order to attract development. The City of Shoreline adopted a list of new transportation improvements as part of its North City Planned Action Ordinance.

Prospective planning, environmental review, and investment prior to development proposals is less expensive than reactive environmental review and investment following

a development proposal – especially if the community and site are not immediately capable of accommodating the impact of the proposal.

Partially true. The table on avoided direct SEPA costs supports the assumption that it is less costly to conduct the planning and some environmental review up front. Other types of environmental review may have to await project level analysis because of statutory mandates and the high cost of the analysis. Some natural resource impacts are very difficult to evaluate at a plan level. Plus, some statutes and federal permits require an analysis of avoidance measures before granting approval for projects. For large subareas with lots of natural resources, it may be cost prohibitive to conduct an avoidance analysis for every potential development project within the subarea. Analyzing development impacts in the year 2000 for development projects that may not occur until 2010 may not be a good use of public money nor very efficient. Some of the development impacts may change due to regulations or market conditions. Instead, jurisdictions rely on critical areas regulations and project specific critical areas evaluations that have been reviewed and approved by resource agencies for mitigation of project level impacts.

Economies of scale result from prospective area and systemwide planning, environmental review, and investment because (a) it benefits many sites rather than a single development proposal; (b) area and systemwide impacts are addressed more efficiently than in an incremental project by project approach; and (c) the cost of permit review and administration is reduced when officials know in advance what types of development may be permitted at a specific location.

Inconclusive. Intuitively, this assumption appears true but there are many variables. DEA heard anecdotal evidence from Tukwila that areawide planning in the MIC subarea improved the evaluation and correction of infrastructure deficiencies over the previous disjointed efforts of Seattle and King County. But the case studies did not provide conclusive evidence one way or another. For example, two of the case studies were in effect single development proposals: Southport and MountainStar. And as mentioned above, some types of impacts are difficult to predict far in advance of the actual development proposal. The cumulative contribution of these unpredictable site impacts to area and systemwide impacts will increase the variance around the analysis.

As for the cost of permit review, rural officials reported it went up after implementing GMA required planning. Urban jurisdictions with subarea plans including planned action ordinances felt the costs of project review dropped because of the shortened review periods.

Communities and site specific developers benefit from objective assessments of their strengths and weaknesses in the planning process. Assessments will help them identify what types of development they are most suited for, and/or identify what public and private investments must be made to attract and support other types of development.

Partially true. The case studies provide some support for this assumption. Several of the jurisdictions conducted market feasibility analyses to determine the best type of

development for the subarea under consideration. For example, Shoreline conducted design charrettes with economists and developers participating. They critiqued the public's ideas for feasibility. They then developed regulations to support this type of development. But before any projects were built, market conditions changed. It remains to be seen whether development guidelines adopted during the boom times of the 1990s prove feasible in 2010.

Lessons Learned

DEA has distilled from the case studies some key lessons that may benefit other jurisdictions or entities contemplating integrated SEPNGMA procedures. These reflect professional judgments and are not hard and fast rules. Their purpose is to provide criteria against which to judge the appropriateness or value of an integrated SEPNGMA process in a particular situation.

Redevelopment of blighted urban areas is conducive to designated planned actions. The Esther Short Redevelopment project illustrates a successful planned action. The area is blighted, the infrastructure exists but needs additional support, there are no natural resource issues, and impacts to the built environment can be readily predicted and mitigated. The costs of analyzing the impacts to the built environment at the planning stage are reasonable. Other good examples include Tukwila's Manufacturing Industrial Center Subarea Plan, Renton's Southport Redevelopment project, and Shoreline's North City Subarea Plan.

Brownfield development requires huge up-front resources. The Thea Foss Waterway Redevelopment Project predates the Regulatory Reform Act and therefore did not take advantage of the designated Planned Action Ordinance approach. But it has similarities to these types of projects in the front-loaded environmental review, the integration of the subarea plan with the cleanup process, and the reduction of risk stemming from the city's investments. This case study illustrates that the same outcome is possible under the right circumstances as that for a designated planned action. The project represents an extreme example because of the costs associated with the environmental review and permitting of a superfund site. Without the major resources of the federal and state governments, the plan would not have been possible. It is still safe to say that the up-front environmental review probably reduced the cost of project review compared to a site-by-site approach. The main difference is who bears the burden of that cost, the public or the private sector.

Greenfield developments pose challenges because of natural resource issues. Two case studies highlight the challenges and strategies for conducting subarea plans and designated planned actions on undeveloped lands with significant natural resources. The Mill Creek SR 527 Corridor Subarea Plan included significant wetlands. The impacts to these wetlands were not addressed in detail in the EIS because of the high costs to conduct such analyses. The city's strategy is to preserve these wetlands through easements granted by developers and to rely on its critical areas regulations for protection. The resource agencies, specifically the Washington State Department of Ecology (Ecology), agreed with this approach. The second case study is the

MountainStar Master Planned Resort in Kittitas County. Here the developer spent more than **$5** million on the EIS and analyzed impacts to all of the natural resources including wetlands. The county was comfortable adopting this single development planned action because of the level of analysis.

Predicting impacts to the built environment is easier than to the natural environment. The underlying premise to regulatory reform is that the impacts of anticipated projects have been adequately analyzed in a prior plan-level EIS so that projects do not need to repeat it. This works well when the cumulative impacts from individual projects can be accurately modeled at a larger planning scale. The predictive models are most accurate for the built environmental impacts like traffic and public services because the systems are simpler and have fewer variables. The predictive models for natural resources, such as groundwater, fish and wildlife habitat, and wetlands, are less accurate because the natural systems are far more complex, and we have less understanding of the variables that influence them. It takes more information, therefore more time and money, to raise the confidence that impacts to natural resources have been adequately addressed. **As** investments are made in understanding natural systems through such efforts as watershed planning, limiting factors analyses, and similar studies, predictive models will be improved to the point where the current level of project analysis may not be required.

Political support must be unanimous or close to it. In almost all the case studies, political support was very strong from the beginning. Most of the case studies represent economic development plans with a significant commitment of public investment. Without this investment, the development community is less likely to see a reduction in risk over developing in other jurisdictions.

Building strong community support is important. All of the planning actions had significant public involvement processes that generated strong community support. Some of the innovative techniques included intense design charrettes, televised sessions, and joint jurisdiction over citizen advisory committee.

Stakeholder involvement including developers is critical. The development community was an active and solicited stakeholder in all of the case studies. This reflects the economic development nature of these actions.

Single jurisdiction control reduces the issues and players. In general, the fewer the players the fewer the issues. The most successful planned actions involved a single jurisdiction issuing permits.

Rural jurisdictions may need technical and financial assistance in order to utilize planned actions. Subarea plans with planned actions require public investment up front in order to reap private development later on. Rural jurisdictions may need more assistance than urban jurisdictions for using the designated planned action process because (1) they lack up-front funding to initiate the detailed studies necessary in the EIS,

and (2) the rate of growth may be so slow that the analysis in the EIS goes stale before they can recoup their investment in the form of development.

Creative integration techniques other than planned actions exist. Tacoma's integrated SEPA/GMA Commercial Rezone Amendment illustrates a creative technique that does not use a designated planned action for streamlining the permit process. In effect, Tacoma created an internal list of categorical exemptions. They identified all the criteria that would lead to a DNS in their newly adopted commercial zone, and if the project qualified, they would adopt it under their prior SEPA determination on the zoning amendments. Tacoma completed SEPA requirements for the applicant. The same concept could be applied in a number of zones, especially those that do not contain a significant amount of greenfields, brownfields, shorelines, or wetlands. Tacoma was also able to successfully create a "win-win" outcome for both the community as a whole and its developers through its SEPA review streamlining efforts. It did this by creating support from developers for adding significant new project design and compatibility requirements to its commercial zoning districts in exchange for providing the expedited SEPA review process for most typical types of projects proposed in these zones.

Timing is everything. Many of the case studies were successful in the economic development objectives because they were in the right place at the right time. For example, several of the plans capitalized on the investment boom of the late 1990s and attracted significant developments. When that bubble burst, development interest slowed considerably. Since Shoreline adopted its North City Subarea Plan and Planned Action in July 2001, they have received only one development application despite very strong participation by the North City Business Association. Another example is the Thea Foss Waterway Redevelopment Project. During the 1980s and 90s, federal and state dollars flowed freely for cleaning up superfund sites. Tacoma was also very creative in using a variety of funding sources to advance components of the plan. Those dollars are now fewer and harder to get.

Conclusions

The Regulatory Reform Act of 1995 has spurred creative and innovative solutions to integrating SEPA environmental review and GMA planning. In particular, the planned action process has been used successfully by a number of jurisdictions to stimulate economic development by reducing the costs and risks to development. The reduction in risk is reflected by the increase in predictability of the permitting process. Increasing predictability occurs by defining clearly the acceptable development standards, removing steps in the review process which create uncertainty, and committing public resources in both people and infrastructure. Under planned actions, developers are getting to "yes" sooner and with more certainty.

Other types of integration techniques are being used successfully. These include the pilot SEPA Nonproject Review Form, the Expanded SEPA checklist, and more traditional SEPA procedures (e.g., subarea plans and capital facilities plans) in association with detailed GMA actions (e.g., adoption, incorporation, and addenda). In particular, the

development of an internal checklist for projects that meet all the development regulations and do not create impacts above those analyzed in prior SEPA determinations may be used successfully for most urban settings.

The cost of conducting adequate environmental review at the planning stage is a problem for smaller, less wealthy jurisdictions. Many of these jurisdictions would not have been able to conduct the planning and environmental review without the grant funding provided by the state. Given the significant investment values generated under these plans, these grants appear to have been good investments.

Recommendations for Actions to CTED

CTED has identified its overall objectives as (1) providing guidance to cities, counties, and special districts on successful strategies for integrating SEPA and GMA, and (2) providing cost/benefit information to the Legislature and other parties on the value of early planning. We have provided some recommendations for actions to meet these objectives as a followup to the findings and conclusions in this report.

Providing guidance to cities, counties, and special districts on successful strategies for integrating SEPA and GMA.

- Based on lessons learned, prepare article for publication; in CTED newsletter or American Planning Association Journal.
- Refine lessons learned into a best practices publication; including examples of model planned action ordinances, subarea plans, and integrated EISs. Include examples of other integration methods such as those of Tacoma.
- Prepare and teach a planning short course on strategies for integrating SEPMGMA.

Providing cost/benefit information to the Legislature and other uarties on the value of early planning.

- Interview developers for testimonials on the value of early planning or the integrated process. This could include questions on risk assessment and the value of planned actions versus no planned action.
- Prepare a one-page executive summary on the cost/benefit analysis highlighting both direct costs savings and investment values.
- Research and evaluate how much additional costs are required to adequately evaluate natural resource impacts on a subarea basis.
- Hold discussions with Ecology, the Department of Fish and Wildlife, and the Department of Natural Resources representatives on cost-effective ways to improve their support for planned actions and other SEPMGMA integration efforts that would reduce the documentation burdens/risks associated with getting their required approvals at the project level.

Cost Benefit Analysis

One of the central questions that is asked in evaluating the use of the integrated SEPA/GMA processes is what are the actual cost savings. Are these alternatives to project-by-project review really worth it? Does the cost of conducting environmental review early in the planning phase generate cost savings at the project phase?

The data collected suggest that jurisdictions track the costs of preparing the integrated environmental documents much better than they track the costs avoided at the project level. In fact, none of the jurisdictions in the survey tracked avoided costs or benefits to the jurisdiction or developers. Some jurisdictions monitored and recorded the reduction in permit processing time by their staff as a consequence of an application qualifying as a planned action. Some jurisdictions tracked the permits that were approved as planned actions. Despite this lack of hard data, most of the jurisdictions believe that there are significant savings from using the integrated processes.

To answer the question of avoided costs, DEA prepared an analysis of typical SEPA costs on a project-by-project basis. DEA made assumptions concerning the agency staff costs, the interest costs of borrowed money, the staff time necessary to process SEPA, and the developer costs for environmental documents. DEA assumptions are based on professional experience and judgment. DEA used the South Everett/Paine Field Planned Action as an example. Everett SEPA staff has reviewed our assumptions and has confirmed their general accuracy.

Assumptions:

- Interest costs – The developer has to pay interest on the development loan and DEA has assumed these costs are **8** percent per year. DEA has assumed that the average project needs at least $1 million in start up costs associated with holding the land, preparing preliminary engineering and studies, and applying for permits.
- Staff costs – The jurisdiction has staff costs associated with reviewing the applications. DEA has assumed the average salary with benefits for a mid-level planner at $75,000 per year.
- Developer staff costs – In most cases, DEA has assumed that the developer has similar staff costs to the city staff.
- Consultant costs – These are usually a lump sum and are based on an average project. The term "average" is meant to include a typical project without unique or special circumstances like hazardous waste, but with traffic and critical areas issues.
- We have calculated costs for the three types of SEPA processes: DNS, MDNS, and EIS.
- The time avoided in SEPA processes are as follows: DNS = five weeks, MDNS = three months, and EIS = nine months.

The following table summarizes the costs avoided for each SEPA process.

Cost Factors	DNS	MDNS	EIS
Interest Costs	$15,000	$20,000	$60,000
Consultant Costs	$0'	$15,000	$200,000
Jurisdiction Staff costs	$1,550[2]	$3,500[3]	$14,000[4]
Developer Staff costs	$1,550	$3,500	$14,000

These costs are conservative for an urban jurisdiction and represent the low end of the spectrum. Depending on the number of environmental issues, the review time and staff costs for an MDNS could be significantly higher. Also, the jurisdiction staff costs do not include support staff for noticing the project. These costs are the approximately the same for all three processes so they were not included.

Some of the jurisdictions studied had processed permits under their planned action ordinances. These include Everett, Vancouver, Tukwila, Mill Creek, Redmond, Renton, and Tacoma. Of these, the most extensive and best documented projects were from Everett. **DEA** has reviewed the list of 27 projects and has identified probable SEPA determinations. The table below compares the costs avoided with the costs to prepare the integrated documents for Everett.

DNS (6 projects)	MDNS (20 Projects)	EIS (1 project)	Total Project by Project Cost	Total Integrated SEPA/GMA Cost	Cost Avoided
$108,600	$840,000	$288,000	$1,236,600	$530,000	$706,000

In addition to the hard costs avoided, there are intangible benefits from the integrated process that are difficult to capture. All of these projects represent substantial investment value in the community. One question is how many of these projects, if any, would not have been pursued but for the integrated process. It seems unlikely that any of the projects would have been so discouraged by the additional SEPA processing so as to have been abandoned. However, it is likely that some of the projects would have been delayed significantly by the combination of additional SEPA process and market forces. What loss of benefits to the community is caused by this delay in investment? The answer to this question is beyond the scope of this project, but does represent a benefit related to the use of the integrated processes.